# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS SAIPAN, TINIAN, ROTA, & NORTHERN ISLANDS



# COMMONWEALTH REGISTER VOLUME 27 NUMBER 02

FEBRUARY 17, 2005

# **COMMONWEALTH REGISTER**

# VOLUME 27 NUMBER 02 FEBRUARY 17, 2005

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## **CORRECTION NOTICES:**

Please take notice that on January 17, 2005 Publication under **Proposed Rules and Regulations** page 23789 should read **Office of the Attorney General** instead of Board of Elections.

On Page 23813 should read **Commonwealth Election Commission** not Board of Election



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Juan N. Babauta
Governor
Diego T. Benavente
Licutenant Governor

# EXTENSION OF EMERGENCY Volcanic Activity on Anatahan

WHEREAS, on December 30, 2004, a Declaration of Emergency was issued with respect to volcanic activity on the island of Anatahan; and

WHEREAS, said Declaration declared the island of Anatahan as unsafe for human habitation and restricted all travel to said island with the exception of scientific expeditions; and

WHEREAS, the volcanic activity and seismic phenomena which prompted said Declaration continues to exist on the island of Anatahan;

NOW, THEREFORE, I, JUAN N. BABAUTA, by the authority vested in me as Governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, do hereby extend a state of disaster emergency in the Commonwealth with respect to the island of Anatahan under the same terms and conditions as are contained in the original Declaration.

This Extension of Emergency shall remain in effect for thirty (30) days, unless the Governor shall, prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been revoked or further extended for a like term, and giving reasons for extending the emergency.

Dated this 28th day of January 2005.

Lt. Governor

Senate President (Fax 664-8803)

House Speaker (Fax 664-8900)

Mayor of the Northern Islands (Fax 664-2710)

Executive Assistant for Carolinian Affairs (Fax 235-5088)

Director of Emergency Management (Fax 322-7743, 9500, 3598)

Attorney General (664-2349)

Secretary of Finance (Fax 664-1115)

Commissioner of Public Safety (Fax 664-9027, 9019)



# Office of the Secretary **Department of Finance**

P.O. Box 5234 CHRB SAIPAN, MP 96950

TEL. (670) 664-1100 FAX: (670) 664-1115

# PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO ADOPT AMENDMENTS TO THE DEPARTMENT OF FINANCE, CUSTOMS REGULATIONS, NO. 4301.4

**EMERGENCY:** The Commonwealth of the Northern Mariana Islands, Department of Finance finds that under 1 CMC § 9104(b), the public interest requires the emergency amendment of Customs Regulations No. 4301.4. This amendment permits the importation for personal consumption of no more than 10 packs of cigarettes that are not included in the Directory of cigarettes approved for sale in the Commonwealth pursuant to Public Law 14-10, Section 3(b). The Department of Finance further finds that the public interest mandates adoption of these regulations upon fewer than thirty (30) days notice, and that these regulations shall become effective upon publication, subject to the approval of the Attorney General and the concurrence of the Governor, and shall remain effective for 120 days.

**REASON FOR EMERGENCY:** Customs officers have reported that implementation of the seizure and forfeiture provisions of Public Law 14-10 at the Commonwealth airports has caused newly arriving tourists to be surprised and confused. This is particularly true among the emerging Chinese tourist market because most brands of Chinese manufactured cigarettes are prohibited from entry into the CNMI due the Chinese manufacturers' noncompliance with CNMI laws. Furthermore, because of the lengthy and dynamic nature of the Directory of approved cigarette brands, it is difficult for the Marianas Visitors Association to adequately inform tourists of prohibited brands on the Declaration Form prior to clearing customs. Thus, it is in the public interest to immediately implement an exception for small amounts of otherwise contraband cigarettes to be brought into the CNMI for personal consumption to prevent some tourists from having a negative first impression of the CNMI.

**INTENT TO ADOPT:** It is the intent to of the Department of Finance to adopt this emergency amendment to the Customs, Section 4301.4., as permanent, pursuant to 1 CMC § 9104(a)(1) and (2). Accordingly, interested persons may submit written comments on these emergency amendments to Fermin Atalia, Secretary of the Department of Finance, Caller Box 10007, Capitol Hill, Saipan, MP 96950, or by fax to (670) 664-1115, during the thirty day period immediately following publication of these regulations in the Commonwealth Register.

# **PUBLIC NOTICE** DEPARTMENT OF FINANCE, CUSTOMS DIVISION, **EMERGENCY REGULATIONS**

Citation of

**Statutory Authority:** 

The Department of Finance is authorized to promulgate these regulations implementing exemptions to the Seizure and Forfeiture provisions of Public Law 14-10.

pursuant to Public Law 14-10, § 7(d).

**Short Statement of** Goals and Objectives:

These emergency regulations will ensure that a substantial group of Chinese tourists do not have a negative first impression of the CNMI by being forced to surrender all of their cigarettes for personal consumption over to Customs upon arrival into the CNMI.

**Brief Summary of the Proposed New Section:** 

These emergency regulations call for an exemption for personal consumption of 10 packs of contraband cigarettes, otherwise declared unlawful for importation under P.L. 14-10.

For Further Information Contact:

Brian R. Caldwell, Assistant Attorney General, Office of

the Attorney General, Civil Division, telephone (670)664-2338, or facsimile (670)664-2349.

Citation of Related And/or Affected Statutes, Rules and **Regulations and Orders:** 

Public Law 14-10, Sections 3(c), 6(b), 6(d) and Department of Finance, Customs Regulations, Section 4301.4, Commonwealth Register, Volume 18, Number

Secretary of Department of Fiance

12, December 15, 1996, Page 14769.

Dated this 31 day of January 2005.

Submitted by:

Submitted by:	FERMIN ATALIG Secretary of Finance	1/24/05 Date
Concurred by:	JUAN N. BABAUTA Governor	01/25/05 Date
Received by:	THOMAS A. TEBUTEB Special Assistant for Administration	1/27/05 Date
Filed and Recorded by:	BERNADITA B. DE LA ERUZ Commonwealth Register	/- 28-05 Date

Pursuant to 1 CMC § 2153, as amended by Public Law 10-50, the emergency rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office

\_ day of January, 2005.

Attorney General

## EMERGENCY AMENDMENT TO DEPARTMENT OF FINANCE. **CUSTOMS REGULATIONS**

Department of Finance, Customs Regulations Section 4301.4, is hereby amended to read as follows:

**Section 4301.4** Cigarettes and Tobacco Products.

All individuals importing alcohol and tobacco for sale or use shall be assessed and shall pay the alcohol and Tobacco Excise Taxes. The exemption specified under 4 CMC §1402(c)(2) as modified by 6 CMC §2301(a)(7), of the Cigarette Labeling and Advertising Act, cigarettes and tobacco items shall only apply to individuals 18 years of age or older. Only ten (10) packs of labeled cigarettes: (1) not complying with the Cigarette Labeling and Advertising Act; or (2) not contained in the Directory of cigarettes approved for sale under Public Law 14-10, Section 3(b) shall be exempt from excise tax and seizure for each person entering the CNMI for personal use and consumption. Any additional non-compliant cigarette packs will be confiscated.

# **Public Notice Department of Finance**

# EMERGENCY REPEAL AND RE-ACTMENT OF PROCUREMENT **REGULATIONS, SECTION 3-108**

Citation of

Statutory Authority:

Pursuant to Article X, Section 8 of the

Commonwealth Constitution ad 1 CMC § 2553(j)

and 1 CMC § 2557.

Short Statement of

Goals and Objectives:

To provide expedited procurement through the

CNMI Water Task Force for goods and services necessary to facilitate the implementation of a 24-

hour water supply in the Commonwealth.

**Brief Summary of** 

The Rule:

Expedited procurement regulations are amended to

provide for modified competitive procurement.

For Further

**Information Contact:** 

Director, Procurement and Supply Division,

Department of Finance at (670) 664-1500.

Citation of Related and/or Affected Statutes, Regulations

And Orders:

CNMI Procurement Regulations, Section 3-108.

Submitted by:

Secretary of Finance

# NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO ADOPT AMENDEMENT TO PROCUREMENT REGULATIONS. **SECTION 3-108**

**Emergency:** The Secretary of Finance for the Commonwealth of the Northern Mariana Islands find that pursuant to Title 1 CMC, Division 9, Chapter 1 and specifically under 1 CMC § 9104(b), the public interest requires the adoption on an emergency basis, of amendments to the Procurement Regulations, Section 3-108. These Procurement Regulations were enacted as published in the Commonwealth Register Vol. 12, No. 10 on October 15, 1990, amended as published in Commonwealth Register Vol. 22, No.08 on August 18, 2000 and as published in the Commonwealth Register Vol. 23, No. 05, on May 24, 2001 and amended as published in the Commonwealth Register, Vol. 26. No.2 on February 23, 2004.

The Secretary of Finance further finds that the public interest mandated the adoption of these amendments to the procurement regulations upon fewer than thirty (30) days notice, and that these amendments shall become effective immediately after filing with the Registrar of Corporations, subject to the approval of the Acting Attorney General and the concurrence of the Governor and shall remain effective for a period of 120 days, unless sooner adopted as permanent regulations.

**Reasons for the Emergency**: The Commonwealth of the Northern Mariana Islands has an urgent need for safe, potable drinking water. The availability of 24-hour water service is an essential requirement for the safety and well being of the community. The Secretary of Finance finds that the existing Procurement Regulations do not provide the framework necessary for the Commonwealth of the Northern Mariana Islands to procure the equipment and services necessary to implement a 24-hour safe water supply in an expeditious fashion. The adoption of these amendments will provide a modified competitive procurement process in certain circumstances. The adoption of these amendments to the Procurement Regulations will allow the CNMI Water Task force to expeditiously acquire good and secure services in furtherance of the stated goal of bringing a safe 24-hour water supply to the CNMI.

**Intent to Adopt:** It is the intention of the Department of Finance to adopt these emergency regulations, pursuant to 1 CMC § 9104(1) &(2). Accordingly interested persons may submit written comments on these regulations to: Director, Procurement and Supply Division, Department of Finance at (670) 664-1500.

Date: February 7, 2005

Submitted by: Fermin Atalig, Secretary of Finance

Date: February 7, 2005

Approved by:

Governor

Date: 2-11-05

Filed and Recorded by:\_ Bernadita B. Dela Cruz

Bolela Cruz

Pursuant to 1 CMC s 2153, as amended by PL-10-50, the following rules and regulations have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Pamela S. Brown Attorney General

# Emergency Re-peal and Re-actment of Sections 3-106 and 3-108 and to amend Section 5-101 of the CNMI Procurement Regulations

Section 3-108 is hereby amended as follows:

# "Section 3-108 Expedited Purchasing in Special Circumstances

- 1. When special circumstances require the expedited procurement of goods or services, the official with expenditure authority may request that the Director approve expedited procurement without the solicitation of bids or proposals.
- 2. The factors to be considered by the Director in approving or disapproving this request shall be:
  - a. The urgency of the government's need for the good or services especially if procuring vehicles and equipment specifically designed for chemical, biological, nuclear exposure and bomb detection and critically needed emergency medical supplies as described by the Office of Domestic Preparedness;
  - b. The urgency of the government's need for good or services to facilitate implementation of a safe 24-hour water supply;
  - c. The urgency of the government's need for professional services to facilitate obtaining critical infrastructure funding in order to harden and enhance critical infrastructures of the Commonwealth or for the implementation of a safe 24-hour water supply.
  - d. The comparative costs of procuring the goods or service from a sole source or through the competitive process;
  - e. The availability of the goods or service in the Commonwealth and the timeliness in acquiring it; and
  - f. Any other factors establishing the expedited procurement is in the best interest of the Commonwealth Government.
- 3. Upon the Director's written determination that the factors in (2) above justify an expedited purchase, he shall process the necessary document(s) and assist the official with the expenditure authority in procuring the required goods or services in the most efficient manner.

- 4. If the Director determines that the request for the expedited procurement did not meet the criteria in (2) above, he shall promptly notify the official with the expenditure authority of his disapproval in writing.
- 5. The expedited procurement shall be as competitive as possible under the circumstances. Whenever possible, the official with expenditure authority shall solicit a minimum of three (3) quotations from qualified vendors.
- 6. The total amount of goods or service that may be approved under this section shall not exceed \$25,000 except when:
  - a. such goods or services are procured for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructures of the Commonwealth including procuring vehicles and equipment specifically designed for chemical, biological, nuclear exposure and bomb detection and critically needed emergency medical supplies as described by the Office of Domestic Preparedness, or
  - b. goods or services are procured for the purpose of facilitating the process of implementation of a 24 hour water supply for the Commonwealth...



## BOARD OF PROFESSIONAL LICENSING

#### Commonwealth of the Northern Mariana Islands

P.O. Box 2078 Saipan, MP 96950 Tel. No.: (670) 234-5897 Fax No.: (670) 234-6040

# PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE REGULATIONS FOR REAL PROPERTY APPRAISERS

INTENDED ACTION TO ADOPT THESE PROPOSED **REGULATIONS:** The the Commonwealth ofNorthern Mariana Islands, Board Professional Licensing, intends to adopt as permanent regulations the attached proposed amendments, pursuant to the procedures of the Administrative Procedure Act, 1 CMC §9104(a). The Board intends to adopt them as permanent regulations after March 31, 2005, and hereby gives at least 30 days notice of its intent. The amendments would be effective 10 days adoption. (1 CMC \$9105 (b)).

**AUTHORITY:** The Board shall adopt rules and regulations establishing criteria and standards regarding licensing or authorization to practice a profession over which the Board has jurisdiction pursuant to the powers granted it by \$3108 of P.L. 11-99, as amended.

THE TERMS AND SUBSTANCE: The intent of these amendments is to update and comply with the applicable federal law, specifically the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and federal regulations. By doing this, we are ensuring the highest standards of professional competence for real property appraisers as well as to protect the interest and welfare of landowners, financial institutions and appraisers in the CNMI.

THE SUBJECTS AND ISSUES INVOLVED: These amendments are to amend, add, and delete some definitions; amend the Qualifying and the distance Education requirements; Under 4.3 Examination Section amend 4.3(A) (5), add 4.3 (A) (6), 4.3 (B) (3) and 4.3(B) (4); amend 4.3(C)(3); amend 4.4(A)(1), 4.4(B), and 4.4(C), the Education requirements under each appraiser classification: add the Certified General Real Property Appraiser classification 4.4 (D); amend 4.5 Approved Course Providers; amend 4.6 Continuing Education, 4.6 (D), 4.6(E), 4.6 (I), 4.6 (J) and 4.6 (M); amend 6.10 (A) (1), (2); amend Temporary License (A) and (B); amend 8.1 and 8.2 Renewal; amend 8.3(A), (B) Reinstatement of Invalid License; amend 8.4(A)(4) and 8.4(B); amend 12.1; amend 13.1; and 16.1.

**DIRECTIONS FOR FILING AND PUBLICATION:** These proposed amendments shall be published in the Commonwealth Register in

the section under Proposed and Newly Adopted Regulations (1 CMC \$9102(a)(1) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular (1 CMC \$9104(a)(1).

TO PROVIDE COMMENTS: Send your comments to Florence C. Sablan, Executive Director, at P.O. Box 502078, Saipan, MP 96950, or fax to ((670)234-6040 or email to <a href="mailto:nmi.bpl@vzpacifica.net">nmi.bpl@vzpacifica.net</a> If you want a copy of the proposed amendments, please come by our office located on the 2<sup>nd</sup> Floor of the Island Commercial Building, Middle Road, Gualo Rai, Saipan. Written comments regarding the proposed amendments are to be submitted within thirty (30) days of publication of this notice in the Commonwealth Register.

Submitted by:	Flering & Munin	02/01/05
Received by:	Francisco de Guerrero BPL (hairman	Date  18/W
	Thomas A. Tebuteb Special Asst. for Administration	Date
Filed by:	Ardela Crus	2/9/05
	Bernadita B. Dela Cruz	Date
	Commonwealth Register	

Pursuant to 1 CMC \$2153, as amended by P.L. 10-50, the rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Pamela Brown, Attorney General

#### **KUETPON I MALENSIAN PROFESIONAT**

Commonwealth I Sankattan Siha Na Islas Marianas P.O. Box 502078 Saipan, MP 969840 Tilifon Numiru: (670)234-5897 Fax Numiru: (670)234-6040

## NOTISIAN PUBLIKU POT I AMENDASION I MA MA PROPONE NA REGULASION MAN KATKULAN PRESIUN TANO'

Intension para ma adoptan I man ma propone na regulasion siha: I Commonwealth I Sankattan Siha Na Islas Marianas, Kuetpon I Malisensian Profesionat, ha intensiona para hu ma adopta petmanente na regulasion siha ni man che'che'ton ni man mapropone na amendasion siha, sigun I kinalamten I Akton Atministradot, 1 CMC Seksiona 9104(a). I Kuetpo ha intensiona para Hu fan ma adopta petmanente I regulasion siha despues de Matso 31, 2005, ya ha na'I pot lu Menos, trenta (30) diha siha, na notisia I intension. I amendasion siha hu efektibu dies (10) siha siha despues de ma adopta. (1 CMC Seksiona 9105 (b)).

Adopta: I Kuetpo para hu adopta regulasion siha pot hu ma establesi areklamento siha pot man lisensia osino man aturisa nu I prinaktikan I prifesion gi hilo' direksion I Kuetpo sigun I ma na'i na aturidat ginen I Seksiona 3108, Lai Publiku 11-99.

Areklamento yan Kinalamten: I intension este siha na amendasion pot para hu fan ma rinueba Yan hu ma komple I ginagagao gi lai federat, espesiatmente I Financial Institutions Reform, Atkon Recovery yan Enforcement, 1989 yan regulasion federat siha. Pot este in na siguru I mas tatkilo na kinalemten profesinat na kapasidat para I man katkula presiun propidat tano yan lokkue proteksion interes yan lina'la' duenon tano' siha, instituasion finansiat siha, yan pupbliku henerat gi halom I CNMI.

I teneteka na mensahe siha: Este na amendasion siha para hu fan ma amenda, muna halom yan Ma laknos difinsion siha; tulaika I Qualifying yan Distance Education requirements; na halom gi Papa 4.3 I Examination Section (4.3) (A) (5); na halom 4.3 (A) (6), 4.3 (B) (3), yan 4.3 (B) (4); Amenda 4.3 ©; amenda 4.4 (B), yan 4.4(C), I Qualifying Educations requirements gi papa Kada klasifikasion katkulan presiu; na halom Klasifikasion Setifikasion Katkulan Presiun Propidat Tano; 4.4(D); ma amenda 4.5 ma apueba na Course Providers; ma amenda 4.6 Continuing education, 4.6 (D), 4.6 (E), 4.6 (J), yan 4.6 (M); amenda 6.10 (A) (1), (2); Amenda 7.1 Temporary License (A) yan (B); amenda 8.1 yan 8.2 Renewal: amenda 8.3 (A), (B) Reinstatement I Invalid na Lisensia; ma amenda 8.4 (A) (4) yan 8.4 (B); amenda 12.1; amenda 13.1; yan 16.1.

Direksion para muna halom yan pupblikasion: Este siha i man ma propone na tinilaika (amendasion) siha hu fan ma pupblika gi halom i Rehistran i Commonwealth gi papa i Seksionan i man ma propone yan nuebu na ma adoptan i regulasion siha (1 CMC Seksiona 9102) (a) (1) yan hu fan ma pega gi propio na lugåt siha gi Civic Center yan gi Ofisinan Gobietnamento gi halom kada Senatorial District, gi fino' English yan taotao tåno', Chamorro yan Carolinian (1 CMC Seksiona 9104) (a) (1).

Nina halom mensåhe: Na halom mensåhe siha guatto as Senora Florence C. Sablan Direktod Eksekatibu, gi P.O. Box 502078, Saipan MP 96950, pat Fax (670) 234-6040 osino email <a href="mailto:nmi.bpl@v2pacifica.net">nmi.bpl@v2pacifica.net</a>. Yanggen malago hao kopian i man ma propone na amendasion siha pot fabot fåtto gi ofisinan måme gi mina dos na bibienda gi Island Commercial Bldg., Middle Road, Gualo Rai, Saipan. I mensåhe siha pot ma propone amendasion siha, na halom gi trenta (30) diha siha gi notisian pupblikasion gi Rehistran i Commonwealth.

Ninahalom as: Therein & Munus	02/01/05	
Francisco Q. Guerrero Kabiseyon BPL	Fecha	
Rinisibe' as:	VISION	
Thomas A. Tebuteb Espesiåt Na Ayudånte Para i Atministrasion	' Fécha	
Rinikot as:  Bernadita B. Dela Cruz)	2/9/05 Fecha	
Sigun i Lai 1 CMC Seksiona 2153, ni inamenda ni Lai Pupbliku 10-50 i regulasion siha ni che'che'ton man ma ribisa yan aprueba ni sufisiente na ligåt gi Ofisinan i Abugao Heneråt i CNMI.		
Pamela Brown	Fecha	

## MWIISCHIL PROFESSIONAL LICENSING

Commonwealth Téél Falúwasch Marianas P.O. Box 502078 Seipél, MP 96950 Tel. No.: (670) 234-5897

Fax. No.: (670) 234-6040

# ARONGOL TOULAP REEL POMWOL LLIWEL KKAAL NGÁLI ALLÉGHÚL SCHÓÓL ISISIWOWUL MÉÉL FALÚW

Aghiyáhil mwoghutul reel fillóól pomwol Allégh kkaal: Commonwealth, mewóól Téél falúw kka Efáng Marianas, Mwiischil Pofessional Licensing, e aghiiy ebwe főscheey fillóól allégh kka e appasch, nge ebwe Pomwol Iliwel, sángi lemelemil Alléghúl Administrative Procedurs, ye 1 CMC 9104 (a). Mwiisch e aghiiy ebwe főscheey fillóól allégh kkaal mwiril Sarobwel 31, 2005, me aa ayoora, ngare mwo eliigh (30) rál reel arongol aghiyagh yeel. Lliwel kkaal ebwe allégheló seigh (10) rál mwiril fillóól. (1 CMC 9105 (b) ).

**Bwángil**: Mwiisch ebwe fillóóy allégh kkaal igha ebwe ayoora lemelemil me aweweel Isisiwowul lisensiya me ngáre mweiti ngáli mwóghutul angaang yeel igha Mwiisch ebwe lemelem wóól sángi bwángil ye re mweiti ngáli sangi 1 CMC 3105, Alléghúl Toulap ye 11-99, 3108, igha aa lliwel.

Aweweel kkepasal: Aghiyaghil lliwel kkaal nge ebwe fischiló me fil ngáli alléghúl federóód reel ghilighilil <u>Financial Institutions Reform</u>, Alleghul <u>Recovery</u> me Enforcement Ilól 1989 me alléghúl federóód kkaal. Sángi mwóghut yeel, si kke lugheey fischi llangal lemelemil mwóghtul angaang reer schóóy isisiwow méél falúw me bwal ammwala ghtchúúr me malaweer aramas me falaweer, <u>financial institutions</u> me aramas toulap mellol CNMI.

Akkatéél Aweewe me Aghiyagh: Lliwel kkaal nge ebwe lliwel, akkatéélong me akkatééwow akkááw bwungúl; siweli lemelemil <u>Qualifying</u> me <u>Distance Education</u>; aschuwulong faal 4.3 <u>Talil Examination</u> (4.3 (A) (5); aschulong 4.3 (A) (6), 4.3 (B) (3) me 4.3 (C) (3); siweli 4.4 (A) (1) 4.4 (B), me 4.4 (C), lemelemil Qualifying Education faal alongal appraiser classification; aschuwulong <u>Certified General Real Property Appraiser classification</u> (4.4 (D); siweli 4.5 <u>Approved Course Providers</u>; siweli 4.6 continuing Education 4.6(D) 4.6 (E), 4.6 (I), 4.6 (J) me 4.6 (M); siweli 6.10 (A) (1), (2); siweli 7.1 Temporary Licence (A) me (B); siweli 8.1 me 8.2 Renewal; siweli 8.3 (A), (B) Reinstatement of Invalid License; siweli 8.4 (A) (4) me 8.4 (B); siweli 12.1, siweli 13.1; me 16.1.

Afal Reel Isisilong me Akkatééwow: Pomwol lliwel kkaal nge ebwe akkatééwow llól Commonwealth Register llól tálil faal pomwol me fillóól Allégh kka e ffé(1 CMC 9102 (a) (1) me ebwe appasch llól bwuley kka e fisch mellól civic center me llól bwulasiyool

gobenno llól alongal <u>senatorial</u> <u>district</u> llól kkepasal Amerikkónu me faleey, Remeraalis me Refalúwasch (1 CMC 9104 (a) (1).

Reel Ubwe Ayoora Aghiyágh: Afanga yóómw aghiyagh ngáli, Florence C. Sablan, Samwool, reel P.O. Box 502078, Seipél, MP 96950, me ngáre fax ngáli (670) 234-6040 me ngare email ngali cnmi.bpl@uzpacifica.net Nágre u tipeli tilighiil pomwol lliwel kkaal, e tooto mereel bwulasiyo ye e lo 2<sup>nd</sup> floor, Island Commercial Building, Middle Road, Ameiraw, Seipél. Agiyágh kkaal ebwe isisilong llól eliigh (30) rál, sángi akkatééwowul arong mellól Commonwealth.

Isaliyallong Therein X Municipal	2/01/05
Francisco Q. Guerrero	Rál
Samwoolul BPL	
Mwir Sángi :	
Thomas A. Tebuteb	Rál
Sów Alillsil Sów Lemelem	
Aisis reel:	
Bernadita A. Dela Cruz	Rál
Commonwealth Register	
Sángi allégh ye 1 CMC 2153 iye aa liwel mered appasch nge raa takkal amweri fischi me allégh Bwungul Allégh Lapalap.	
Pamela Brown, Sów	Rál
Bwungúl Alégh Lapalap	

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# **REGULATIONS OF THE BOARD OF PROFESSIONAL LICENSING FOR**

## REAL PROPERTY APPRAISER

# PART I. GENERAL PROVISIONS

- Purpose. The purpose of these regulations is to comply with applicable federal law, 1.1 specifically the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and federal institutions, as well as to protect the interests of land owners, financial institutions, appraisers and other interested persons in the Commonwealth of the Northern Mariana Islands (hereafter "CNMI or NMI").
- Intent and Effect. The receipt of a license from the CNMI Board of Professional 1.2 Licensing does not permit a person to engage in business in the CNMI until such person has complied with any and all applicable laws, rules and regulations and secured all necessary licenses and permits for conducting business in the NMI. It is the intent of these regulations to ensure high standards of professional competence for real property appraisers in the CNMI and to comply with applicable federal statutes and regulations.

Due to scarcity of qualified persons in the CNMI, it is the intent of these regulations to establish two classes of approved real property appraisers:

### **Non-Federally Related Transactions**

Licensed Residential Real Property Appraiser Licensed General Real Property **Appraiser** 

#### Federally Related Transactions

Licensed Real Property Appraiser Certified Residential Real Property Property Appraiser Certified General Real Property **Appraiser** 

The first class of appraisers will qualify to do appraisals in non-federally related real property transactions and will not qualify under federal law and these regulations to perform federally related real property transactions.

The second class of real property appraisers will qualify to perform appraisals in both federally related and non-federally related real property transactions, the difference between licensed and certified status being further defined.

Authority. The CNMI Board of Professional Licensing (hereafter "Board") has the 1.3 authority to regulate real property appraisers pursuant to 4 CMC, Div. 3, Section 3105 and Section 3108.

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## PART II. DEFINITIONS

- 2.1 Appraisal Foundation. The Appraisal Foundation established on November 30, 1987, as a non-for-profit corporation under the laws of Illinois. The Foundation is charged by Title XI with the responsibility of establishing, improving, and promoting minimum uniform appraisal standards and appraiser qualifications criteria.
- **2.2** Appraisal Qualifications Board. An independent board appointed by the Appraisal Foundation to establish criteria for licensing of appraisers.
- 2.3 Appraiser or Real Property Appraiser. A CNMI Licensed Residential Real Property Appraiser or a CNMI Licensed General Real Property Appraiser for non-federally related transactions; or a CNMI Licensed Real property Appraiser, a Certified Residential Real Property Appraiser, or a Certified General Real Property Appraiser for federally related transactions, who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.
- 2.4 Appraisal. The act or process of developing an opinion of value.
- **2.5** Appraisal Assignment. One or more real estate appraisals and written appraisal reports which are covered by a single contract to provide an appraisal.
- **2.6** Appraisal Consulting. The act or process of developing an analysis, recommendation, or opinion to solve a problem, where an opinion of value is a component of the analysis leading to the assignment results.
- 2.7 Appraisal Practice. Valuation services performed by an appraiser, including but not limited to appraisal, appraisal review, or appraisal consulting.
- 2.8 Appraisal Review. The act or process of developing and communicating an opinion about the quality of another appraiser's work.
- 2.9 Appraisal Subcommittee. The Appraisal subcommittee of the Federal Financial Institutions Examination Council (FFIEC) was created on August 9, 1989, pursuant to Title XI to oversee the real estate appraisal process as it relates to federally related transactions and monitors the requirements established by each state or territory's appraiser regulatory agency for the licensing and certification of appraisers.

- 2.10 Appraiser Trainee. A person who has been issued a license to practice as a real property appraiser trainee in the Northern Marianas.
- 2.11 **Certified Appraiser.** A CNMI Certified Residential or General Real Property Appraiser for federally related transactions.
- 2.12 Classroom Hour. Sixty minutes, of which at least fifty minutes are instruction attended by the student. The prescribed number of classroom hours includes time devoted to examinations.
- 2.13 Complex One-To Four Family Residential Property Appraisal. One in which the property to be appraised, market conditions, or form of ownership is a typical and which have a significant value contribution. For example, unusual factors may include but are not limited to:
  - (a) architectural style;
  - (b) age of improvements;
  - (c) size of improvements;
  - (d) size of lot;
  - (e) neighborhood land use;
  - (f) potential environmental hazard liability;
  - (g) leasehold interests;
  - (h) limited readily available comparable sales data; or
  - (i) other unusual factors.
- 2.14 Continuing Education. Education that is creditable toward the education requirements that must be satisfied to renew licensure as a Licensed Real Property Appraiser, Certified Residential Real Property Appraiser, or a Certified General Real Property Appraiser.
- 2.15 Direct Supervision. To actively and personally review the appraisal report of an appraiser trainee, to accept responsibility for the appraisal, and to sign the report attesting to the acceptance of the appraisal as being independently and impartially prepared and in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).
- Distance Education. Any educational process based on the geographical separation 2.16 of learner and instructor (e.g., CD Rom, on-line learning, correspondence courses, video conferencing, etc.).
- 2.17 Federally Related Transaction. The term "federally related transaction" means any real estate-related financial transaction which:

- (a) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and
- (b) requires the services of an appraiser.
- 2.18 License. The document indicating that the person named thereon has satisfied all requirements for licensure as a CNMI licensed or certified appraiser for federally or non-federally related transactions.
- 2.19 Licensed Appraiser. Licensed Residential Real Property Appraiser or a Licensed General Real Property Appraiser for non-federally related transactions; or a Licensed Real Property Appraiser for federally related transactions.
- 2.20 Market Analysis. A study of market conditions for a specific type of property.
- 2.21 Market Value. A type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal.
- 2.22 Mass Appraisal. The process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.
- 2.23 Non-Federally Related Real Estate Transaction. Any transaction which does not meet the definition of a federally related transaction.
- 2.24 Personal Property. Identifiable tangible objects that are considered by the general public as being "personal" for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all tangible property that is not classified as real estate.
- 2.25 Probation. A condition placed upon an individual's practice that obligates they meet various conditions and further demonstrates that they have maintained a satisfactory performance in their practice over a specific period of time.
- **Qualifying Education.** Education that is creditable toward the education requirements for initial licensure under one or more of the three real property appraiser classifications.
- 2.27 Real Property. The interests, benefits, and rights inherent in the ownership of real estate.

- 2.28 Real Property-Related Financial Transaction. Any transaction involving:
  - (a) the sale, lease, purchase, investment in, or exchange of real property, including interests in property, or the financing thereof; or
  - (b) the refinancing of real property or interests in real property; or
  - © the use of real property or interests in real property as security for a loan or investment, including mortgage backed securities.
- 2.29 Real Estate. An identified parcel or tract of land, including improvements, if any.
- **2.30** Report. Any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client upon completion of an assignment.
- 2.31 Residential Property. Any parcel of real property, improved or unimproved, that is utilized for one-to-four family purposes and where the highest and best use is for one-to-four family purposes. A residential unit in a condominium, townhouse or cooperative complex is considered to be residential real property. Residential property does not include subdivisions wherein a development analysis or appraisal is necessary or utilized.
- **2.32** Reinstate or Reinstatement. The granting of permission to perform appraisal work by the Board to a person whose license or certificate has been previously suspended.
- 2.33 Revocation. A termination of a license to practice. Such action should require that the licensee surrender any and all license or wallet-size card issued by the Board. In order for a licensee to reinstate a license that has been revoked, the licensee is required to apply as a new applicant.
- 2.34 Suspension. A suspension terminates a license privileges for a limited time. The license may be reinstated after the licensee fulfilled conditions imposed by the Board.
- 2.35 Temporary Appraiser's License. A license for one specific appraisal assignment, issued to a Licensed or Certified appraiser not residing in the CNMI or who has no established business in the CNMI.
- 2.36 Tract Development. A project of five units or more that is constructed or is to be constructed as a single development. A tract development may be units in a subdivision, condominium project, time share project, or any similar project meant to be sold as

- individual units over a period of time. A project is deemed to be a tract development whether it currently is or is intended to sell as a single development.
- 2.37 Uniform Standards of Professional Appraisal Practice or USPAP. Standards of appraisal practice developed by the Appraisal Standards Board (ASB) of the Appraisal Foundation.
- 2.38 Value. The monetary relationship between properties and those who buy, sell, or use those properties.
- 2.39 Years of Experience. A year is defined in terms of hours within a calendar year. One thousand (1,000) hours constitutes a year of appraisal experience.

## PART III. POWERS AND DUTIES OF THE BOARD

- 3.1 Powers and Duties of the Board. In addition to those powers and duties specifically enumerated by law, the Board shall have the following powers and duties:
  - (a) to grant, deny, suspend, revoke, place on probation, renew, or refuse to renew permission to practice as a Licensed or Certified real property appraiser in the CNMI;
  - **b**) to adopt, amend, or repeal rules and/or regulations as necessary to effectuate fully the law:
  - (c) to enforce the law and rules and regulations adopted pursuant thereto;
  - (d) to discipline a real estate appraiser to any cause prescribed by law or for any violation of the rules and regulations and refuse to grant a person permission to practice as a real property appraiser for any cause that would be grounds for disciplining a real property appraiser;
  - (e) to act as the designated representative of the CNMI to exempt, waive or implement the requirements of 12 U.S.C.§3301 et seq.;
  - (f) to revoke or suspend the permission to practice as an appraiser or otherwise condition the scope of the license of the appraiser for any violation of the law or these regulations;
  - (g) to impose continuing education requirements as a prerequisite to renewal of a license, as necessary;
  - (h) to issue an annual statement describing the receipts and expenditures in the administration of these regulations during each fiscal year;
  - to compel the attendance of witnesses and production of books, documents, records, and other papers; to administer oaths; and to take testimony and receive evidence concerning all matters within their jurisdiction. These powers may be exercised directly by the Board or the Board's authorized representative acting by authority of law;

- (j) to contract with qualified persons, including attorneys, hearing officers, accountants, investigators, and other necessary personnel to assist the Board in exercising the Board's powers and duties;
- (k) to contract with a professional testing agency to develop and administer examinations;
- (1) to do all other things necessary to carry out the provisions of these regulations and to meet the requirements of federal law where necessary regarding licensing of appraisers that the Board determines are appropriate for Licensed and Certified appraisers in the CNMI.

## PART IV. REQUIREMENTS FOR LICENSURE

- 4.1 Requirements for Licensure. It shall be unlawful for an individual who is not licensed in the CNMI to prepare or hold oneself out as being able to prepare an appraisal in connection with a real property related transaction. It shall be unlawful for a person with one class of license to perform an appraisal requiring a different class of license.
- 4.2 General Requirements. All applicants for a license shall possess a reputation for honesty, trustworthiness, fairness, and financial integrity; meet educational and experience requirements; and shall pass an examination approved by the Appraiser Qualifications Board of the Appraisal Foundation and not have been convicted of a crime related to real property appraisal profession. Applicants for the non-federally related appraiser license must take and pass the local appraisal examination as part of the requirement.
- 4.3 Requirements for Real Property Appraiser, Federally Related Transactions. All applicants for a Real Property Appraiser license must meet the following requirements:

#### A. Education.

- 1. Classroom Hour.
  - a. A classroom hour is 60 minutes, of which at least 50 minutes are instruction attended by the student. The prescribed number of classroom hours includes time devoted to examinations which are considered to be part of the course.
- 2. Credit for the classroom hour requirement may be obtained only from the following institutions:
  - a. Colleges or Universities
  - b. Community or Junior Colleges
  - c. Real Estate Appraisal or Real Estate Related Organizations

- d. State or Federal Agencies or Commissions
- e. Proprietary Schools
- f. Providers approved by the Board
- g. AQB approved course providers
- 3. Credit toward the classroom hour requirement may be awarded to instructors of appraisal courses.
- 4. Experience may not be substituted for education.
- 5. Qualifying Education (QE).
  - a. Applicant must have completed courses in subjects related to real property appraisal which shall include coverage of the 15-hour National USPAP Course, or its equivalent. Equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP qualifying education credit shall only be awarded when the class is instructed by an AQB Certified Instructor (s) and the class is instructed by at least one residential or general state certified appraiser.
  - b. Classroom hours may be obtained only where the minimum length of the education offering is at least 15 hours and the individual successfully completes an approved closed-book examination pertinent to that education offering.
  - c. Courses taken for QE must not be repetitive in nature. USPAP Courses taken in different years are not repetitive.
- 6. Distance Education to meet Qualifying Education Requirement
  - a. Distance education is defined as any educational process based on the geographical separation of learner and instructor (e.g.,CD Rom, on-line learning, correspondence courses, video conferencing, etc.). For QE, distance education must provide interaction between the learner and instructor and include testing.
    - b. A distance education course may be acceptable to meet the classroom hour requirement, or its equivalent, provided that the course is approved by the Board, the learner successfully completes a written examination proctored by an official approved by the presenting entity, college or university, the course meets the requirements for qualifying education established by the AQB, the

course is equivalent to the minimum of 15 classroom hours and meets one of the following conditions:

- The course is presented by an accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines; or
- **(b)** The course has received approval of the International **Distance Education Certification Center (IDECC) for the** course design and delivery mechanism and either a) the approval of the AQB Course Approval Program, or b) the approval of the Board, for the content of the course.

#### B. Examination.

- 1. Each applicant for a license shall successfully pass the appropriate examinations of the AQB approved Uniform Appraiser Examination. examination must be successfully completed. There is no alternative to successful completion of the examination.
- 2. Passage of an examination taken in another jurisdiction may be approved as meeting the examination requirement provided the examination is the AQB approved Uniform Appraiser Examination.
- 3. **Examinees who fail the 15-hour National USPAP Course Examination** are allowed to re-take the examination up to three times without re-taking the course. Each time the examination is re-taken the examinee must be administered a different version (there are three versions) of the examination. After three unsuccessful attempts the examinee must re-take the course.
- 4. Applicants have a reasonable period of time (up to 24 months after board approval) to take the examination. Successful completion of the examination is valid for a period of 24 months. If an applicant does not obtain the related appraiser credential within 24 months from passing the examination, the examination loses its validity to support issuing an appraiser credential. To regain eligibility for the credential, the applicant must re-take and pass the examination. This applies to individuals obtaining the initial certified credential or upgrading from a lower level credential to either the certified residential or certified general classification.

#### C. Experience.

- 1. Education may not be substituted for experience.
- 2. Acceptable appraisal experience includes, but is not limited to the following:
  - Fees and staff appraisal
  - b. Ad valorem tax appraisal
  - Condemnation appraisal c.
  - d. Technical review appraisal
  - Appraisal analysis
  - f. Real estate consulting
  - Highest and best use analysis g.
  - h. Feasibility analysis/study
- 3. The verification for experience credit claimed by an applicant shall be on forms prescribed by the Board which should include:
  - Type of property
  - Date of report b.
  - Address of appraised property
  - d. Description of work performed
  - Number of work hours

If requested, experience documentation in the form or reports or file memoranda should be available to support the experience claimed.

- 4. Experience obtained after January 1, 1991 shall comply with the Uniform Standards of Professional Practice (USPAP).
- 5. There is no time limit during which experience may be obtained. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience (i.e. Year 1-200 hours, year 2-800 hours, etc.).
- D. Compliance with USPAP

Appraisers in all classifications shall perform and practice in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), as amended.

#### **Real Property Appraiser Classifications** 4.4

#### A. Trainee Real Property Appraiser Classification

The scope of practice for this classification is the appraisal of those properties which the supervising appraiser is **permitted** to appraise. The appraiser trainee shall be entitled to obtain copies of appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of five years, or at least two years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.

#### 1. Qualifying Education

- As a prerequisite for application, an applicant must have completed 75 classroom hours in subjects related to real estate appraisal which shall include the 15-hour National USPAP Course, or its equivalent.
- b. Subjects related to real estate appraisal shall include the following topics listed below:
  - (a) **Influences on Real Estate Value**
  - **(b) Legal Considerations in Appraisal**
  - (c) Types of Value
  - (**d**) **Economic Principles**
  - (e) Real Estate Markets and Analysis
  - **(f) Valuation Process**
  - (g) **Property Description**
  - (h) **Highest and Best Use Analysis**
  - **(i) Appraisal Statistical Concepts**
  - **Sales Comparison Approach (i)**
  - (k) **Site Value**
  - **(1)** Cost Approach
  - (m) **Income Approach**
  - **Valuation of Partial Interest** (n)
  - **(o) Appraisal Standards & Ethics**
- c. Qualifying education must have been obtained within the five year period immediately preceding application for licensure.

#### 2. Examination

There are no examination requirements for this classification but the trainee shall pass examinations in the prerequisite courses.

- 3. Experience
  - No experience is required as a prerequisite for this classification.
- 4. **Training**

- The appraiser trainee shall be under the direct supervision of a a. Licensed or Certified appraiser.
- The supervising appraiser shall be responsible for the training, guidance, and direct supervision of the appraiser trainee by:
  - **i**) accepting responsibility for the appraisal report by signing and certifying the report is in compliance with USPAP;
  - reviewing and signing the appraiser trainee appraisal report(s); and
  - iii) personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent, in accordance with the Competency **Provision** of the USPAP for the property type.
- The appraiser trainee is permitted to have more than one c. supervising appraiser.
- d. An appraisal log shall be maintained by the appraiser trainee and shall, at a minimum, include the following for each appraisal:
  - i) Type of property
  - ii) Date of Value
  - iii) Address of appraised property
  - iv) Description of work performed by the trainee and scope of the review and supervision of the supervising appraiser
  - Number of works hours v)
  - vi) Signature and license number of the supervising appraiser
- The supervising appraiser shall be in good standing in the CNMI, e. not subject to any disciplinary action within the last two years.
- Separate appraisal logs shall be maintained for each supervising appraiser, if applicable.
- 5. Continuing Education
  - Fourteen (14) continuing education hours for each year (28 hours); a. and
  - Successful completion of the 7-hour National USPAP Update b. Course, at least once every two years.

#### В. **Licensed Real Property Appraiser Classification**

The Licensed Real Property classification applies to the appraisal of non-complex one to four residential units having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than \$250,000. classification includes the appraisal of vacant or unimproved land that is utilized for

1-4 family purposes or for which the highest and best use is for 1-4 family purposes. This classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

#### 1. Qualifying Education

- The prerequisite for taking the examination is completion of Ninety (90) classroom hours in subjects related to real estate appraisal, which shall include completion of the 15-Hour National USPAP Course, or its equivalent.
- b. Subjects related to real estate appraisal shall include the following topics listed below:
  - (a) **Influences on Real Estate Value**
  - **(b) Legal Considerations in Appraisal**
  - (c) Types of Value
  - (d) **Economic Principles**
  - Real Estate Markets and Analysis (e)
  - **Valuation Process (f)**
  - (g) **Property Description**
  - (h) **Highest and Best Use Analysis**
  - (i) **Appraisal Statistical Concepts**
  - **(i) Sales Comparison Approach**
  - (k) **Site Value**
  - **(1)** Cost Approach
  - **Income Approach** (m)
  - (n) Valuation of Partial Interest
  - **(0) Appraisal Standards & Ethics**

#### 2. Examination

The AQB approved Uniform State Licensed Real Property Appraiser Examination must be successfully completed.

#### 3. Experience

Two thousand (2,000) hours of appraisal experience is required.

#### 4. Continuing Education

- Fourteen (14) continuing education hours for each year (28) hours); and
- Successful completion of the 7-hour National USPAP Update b. Course, at least once every two years.

#### C. Certified Residential Real Property Appraiser Classification

The Certified Residential Real Property classification applies to the appraisal of one to four residential units without regard to transaction value or complexity. This classification includes the appraisal of vacant or unimproved land that is utilized for 1-4 family purposes or for which the highest and best use is for 1-4 family purposes. This classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

#### 1. Qualifying Education

- The prerequisite for taking the examination is completion of One hundred twenty (120) classroom hours, which may include the 90 classroom hour requirement for the Licensed Real Property classification, of courses in subjects related to real estate appraisal, which shall include completion of the 15-Hour National USPAP Course, or its equivalent.
- Subjects related to real estate appraisal shall include the following topics listed below:
  - **Influences on Real Estate Value** (a)
  - **(b)** Legal Considerations in Appraisal
  - **Types of Value** (c)
  - **Economic Principles (d)**
  - Real Estate Markets and Analysis (e)
  - **Valuation Process (f)**
  - (g) **Property Description**
  - **(h) Highest and Best Use Analysis**
  - **Appraisal Math and Statistics** (i)
  - **Sales Comparison Approach (i)**
  - (k) **Site Value**
  - **(I)** Cost Approach
  - (m) **Income Approach**
  - (n) Valuation of Partial Interest
  - Appraisal Standards & Ethics (0)
  - **Narrative Report Writing (p)**

#### 2. Examination

The AQB approved Uniform State Certified Residential Real Property Appraiser Examination must be successfully completed. The Certified General Real Property Appraiser Examination is not equivalent to this examination.

#### 3. Experience

Two thousand five hundred (2,500) hours of experience obtained during no fewer than twenty-four (24) months is required. The hours may be cumulative, but the required number of months of real estate appraisal experience must accrue before an individual can be certified.

#### 4. Continuing Education

- Fourteen (14) continuing education hours for each year (28) hours; a. and
- b. Successful completion of the 7- hour National USPAP Update Course, at least once every two years.

#### D. Certified General Real Property Appraiser Classification This classification applies to the appraisal of all types of real property.

#### 1. Qualifying Education

- The prerequisite for taking the examination is completion of One hundred eighty (180) classroom hours, which may include the 90 classroom hour requirement for the Licensed Real Property classification, or the 120 classroom hour requirement for the Certified Residential Real Property Classification, of courses in subjects related to real estate appraisal, which shall include completion of the 15-hour National USPAP Course, or its equivalent.
- Subjects related to real estate appraisal shall include the following topics listed below:
  - **Influences on Real Estate Value** (a)
  - **(b) Legal Considerations in Appraisal**
  - **Types of Value** (c)
  - **Economic Principles** (d)
  - Real Estate Markets and Analysis (e)
  - **Valuation Process (f)**
  - **Property Description (g)**
  - (h) **Highest and Best Use Analysis**
  - **(i) Appraisal Math and Statistics**
  - **Sales Comparison Approach (i)**
  - (k) **Site Value**
  - **(I) Cost Approach**
  - **Income Approach** (m)

- (n) **Valuation of Partial Interest**
- (o) **Appraisal Standards & Ethics**
- **(p) Narrative Report Writing**

#### 2. Examination

The AQB required Uniform State Certified General Real Property Appraiser Examination must be successfully completed.

#### 3. **Experience**

Three Thousand (3,000) hours of experience obtained during no fewer than thirty (30) months is required, of which, 1,500 hours must be in nonresidential appraisal work. The hours may be cumulative, but the required number of months of real estate appraisal experience must accrue before an individual can be certified.

#### 4. **Continuing Education**

- Fourteen (14) continuing education hours for each year (28) hours; and
- b. Successful completion of the 7- hour National USPAP Update Course, at least once every two years.

#### 4.5 **Approved Course Providers**

- Colleges, universities and community and junior colleges accredited by the Commission on Colleges, or a regional accreditation association, or is on the U.S. Secretary of Education's approved accreditation list.
- В. Real property appraiser or real estate related organizations, proprietary schools, and others shall be approved provided that the course provider have been approved by the Board, or have obtained approval of their course(s) under the Appraisal Qualifications Board (AQB) Course Approval Program (CAP).

#### 4.6 Continuing Education (CE)

The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his/her skill, knowledge and competency in real estate appraising.

Α. The equivalent of fourteen (14) classroom hours of instruction in courses or seminars for each year during the period preceding the renewal is required. (For

example, a two-year licensing term would require twenty-eight (28) hours). These hours may be obtained anytime during the two-year term.

- B. Credit towards the continuing education hour requirements for each appraiser classification may be granted only where the length of the educational offering is at least two hours.
- C. Credit for the classroom hour requirement may be obtained only from the following institutions:
  - Colleges or Universities
  - b. Community or Junior Colleges
  - Real Estate Appraisal or Real Estate Related Organizations c.
  - d. State or Federal Agencies or Commissions
  - **Proprietary Schools** e.
  - f. Providers approved by the Board
  - AQB approved course providers g.
- D. Credit may be granted for educational offerings which are consistent with the purpose of continuing education and cover real estate related appraisal topics, including, but not limited to:
  - Ad valorem taxation a.
  - Arbitration b.
  - Business courses related to the practice of real estate appraisal c.
  - d. Development cost estimating
  - Ethics and standards of professional practice
  - f. Land use planning, zoning, taxation
  - Management, leasing, brokerage, timesharing g.
  - h. Property development
  - i. Real estate appraisal
  - j. Real Estate financing and investment
  - k. Real Estate law
  - l. Real estate litigation
  - Real estate appraisal related computer applications m.
  - Real estate securities and syndication n.
  - Real property exchange 0.
- E. Appraisers must successfully complete the 7-Hour National USPAP Update Course, or its equivalent, at least once every two years. Equivalency shall be determined through the AQB Course Approval Program or by an alternate method

established by the AQB. USPAP continuing education credit shall only be awarded when the class is instructed by an AQB Certified Instructor (s) and the class is instructed by at least one residential or general state certified appraiser.

- F. Qualifying education courses are acceptable as continuing education courses as long as they are not a duplicate.
- G. An appraiser who has successfully completed an approved course to meet any part of such appraiser's continuing education requirements may not repeat that course unless at least one full year has passed since the completion of that course.
- H. The Board, in its discretion, may require the completion of an examination at the end of any continuing education course.
- I. Continuing education credit may also be granted by the Board for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities that are determined by the Board to be equivalent to obtained continuing education. Credit for instructing any given course or seminar can only be awarded once during a continuing education cycle.
- J. Credit awarded for the continuing education requirement may also be awarded for the qualifying education classroom hour requirement when an individual seeks a different classification than that held, providing the educational offering meets the criteria established.
- K. Continuing education credit hours in excess of the twenty-eight (28) continuing education hours for every two year renewal period shall not be credited to satisfy continuing education hours for the next two year renewal period.
- L. As a prerequisite to renewal of a license, a real property appraiser shall present satisfactory evidence of having met the continuing education requirements.
- M. Distance Education to meet Continuing Education Requirement Distance education courses may be acceptable to meet the continuing education requirements provided that the course is approved by the Board, the course is a minimum of two classroom hours and meets the requirements for continuing education courses established by the AOB and meets one of the following conditions:

- a) the course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance; or
- b) the course has been presented by an accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation which demonstrates mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable); or
- c) the course has received approval of the International Distance Education Certification Center (IDECC) for the course design and delivery mechanism and either a) the approval of the AQB Course Approval Program, or b) the approval of the Board, for the content of the course and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring

organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation which demonstrates mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

#### PART V. APPRAISERS-NON-FEDERALLY RELATED TRANSACTIONS

- 5.1 Education/Experience Requirements for Non-Federally Related Transactions. Applicants must meet the following requirements for licensing as a CNMI Licensed Residential Real Property Appraiser or CNMI Licensed General Real Property Appraiser, non-federally related transactions or for renewal:
  - A. Licensed Residential Real Property Appraiser - Non-Federally Related Transactions classification - includes the appraisal of vacant or unimproved land of one to four residential units. This classification does not include the appraisal of subdivisions wherein a development appraisal is necessary and utilized. This appraiser is not qualified under the law and these regulations to perform federally related real property

transactions. At least 50% of the experience claimed must have been in major residential appraisal work.

- B. Licensed General Real Property Appraiser Non-Federally Related Transactions Classification - This classification requires that at least 50% of the experience claimed must have been in non-residential appraisal work and can do appraisals of all real estate transactions without regard to transaction value or complexity. This appraiser is not qualified under the law and these regulations to perform federally related real property transactions.
- C. **Education and Experience** 
  - One Hundred (100) classroom hours in courses related to real estate appraisal with six (6) years experience as an appraiser; or
  - 2. An AA in Business Administration with seventy-five (75) classroom hours in courses related to real estate appraisal with (4) years experience as an appraiser; or
  - 3. A Bachelor's degree or higher with fifty (50) classroom hours in courses related to real estate appraisal and two (2) years experience as an appraiser.
- All applicants must take and pass the local appraisal examination approved by the D. The examination shall be based upon recognized appraisal standards, to be selected and administered by the Board pursuant to its rulemaking power.
- E. Police clearance from all states where licensed or presently or formerly residing shall be furnished as a condition to apply for a license or renewal.
- F. To verify appraisal experience as required in Section (C), the applicant must submit at least one appraisal report he or she has written for each of the required years of experience above mentioned.

#### PART VI. APPLICATION

- 6.1 Application for Licensure. Application for licensure shall be made under oath or under penalty of perjury as permitted under CNMI law on a form to be furnished by the Board. The form may require the applicant to provide:
  - Α. The applicant's full name;

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- B. A statement that the applicant has attained the age of majority (18);
- C. The applicant's current business or mailing address or publication, and the applicant's current resident address;
- D. The applicant's social security number;
- E. The applicant's employment history during the five years preceding the date of the filing of the application, with names and addresses of each employer;
- F. The date and place of any conviction of felony or any crime in any way related to any appraisal practice;
- G. Information regarding any disciplinary proceedings or disciplinary actions taken by any jurisdiction;
- H. A designation in writing appointing the Board to act as the applicant's agent upon whom all judicial and other process or legal notices directed to the applicant may be served. The applicant shall agree that service upon the Board shall have the same legal force and validity as if personally served upon the applicant when such judicial or other process or legal notice is related directly or indirectly to a license issued by the Board. This procedure is for informational purposes only and is not intended to be, and of itself does not constitute, valid, legal service upon the licensee who must be served on a basis consistent with applicable CNMI laws, rules, regulations and/or Rules of Court. The Board shall immediately forward such judicial or other process or legal notice to the licensee by the mailing of such document certified mail, return receipt requested, to the last address which the licensee has provided to the Board. The Board's compliance with the notification requirement as provided herein shall conclude the Board's liability and notification responsibility of the licensee.
- I. A photograph of the applicant for identification purposes;
- J. Any other information the Board may require to investigate the applicant's qualifications for licensure.
- **6.2** Supporting Documents Required. Every applicant shall furnish the following with the applicant:
  - A. The appropriate fees;

- B. Proof that the applicant has met the educational, examination, and experience requirements;
- C. Notarized statement of experience or under penalty of perjury as permitted by applicable CNMI law;
- D. Three reference from lenders or other individuals who have had dealings relating to the applicant's appraisal assignments attesting to the applicant's experience and reputation for honesty, truthfulness, fairness, and financial integrity;
- E. If requested, proof that the applicant is a CNMI or United States citizen or a non-U.S. citizen authorized to work in the CNMI: and
- F. If requested, appraisal reports or file memoranda.
- G. Other additional information as the Board from time to time deems appropriate or necessary.
- 6.3 Reputation for Honesty, Truthfulness, Fairness and Financial Integrity. Applicant shall demonstrate, as set forth in 6.2 (D) that the applicant possesses a good reputation for honesty, truthfulness, fairness and financial integrity.
- 6.4 Issuance of License. The CNMI appraiser license shall be issued upon the applicant meeting all appropriate requirements and must be renewed as required by the CNMI law and provided herein every two years from the date of issuance or renewal.
- 6.5 **License.** A CNMI license shall only be issued to individuals and the license shall not be transferable.
- 6.6 Filing of Current Address. Every licensee shall provide written notice to the Board of any changes of the licensee's mailing, business, or residence address within ten days of the change. Any requirements that the Board provide notice to licensed appraisers shall be deemed met if notice is sent to the address on file with the Board.
- 6.7 Responsibility of Applicant to Furnish Information and Documentation. It shall be each applicant's responsibility to furnish the information and documents requested. In the event of any change of information provided, the applicant shall notify the Board in writing within thirty days of any change.

- 6.8 Signing and Verification of Application. Every application and all references shall be signed and notarized or signed under penalty of perjury as permitted by applicable CNMI law by the applicant or the person attesting to the experience and reputation of the applicant.
- 6.9 Application for Temporary Practice. Application for a temporary license will be processed and issued within five (5) business days after receipt of a complete application for a temporary license.

# 6.10 Application for Certified Real Property Appraiser, Federally Related Transactions from Licensed Real Property Appraiser, Federally Related Transaction.

- A. An individual holding a current real property appraiser, federally related transaction license may apply for certified real property appraiser, federally related transactions status upon submittal of the following:
  - 1. Certified Residential Real Property Appraiser:
    - (a) appropriate fees;
    - (b) proof that the applicant has met the education requirement of 120 classroom hours, which may include the 90 classroom hours requirements for licensed classification, or courses in subjects related to real property appraisal which shall include the 15 hour National USPAP Course and examination and successful completion of the AQB approved Uniform State Certified Residential Appraiser Examination; and
    - (c) proof that the applicant has performed at least 2,500 hour of major residential appraisal work obtained within 24 months.
  - 2. Certified General Real Property Appraiser:
    - (a) appropriate fees;
    - (b) proof that the applicant has met the education requirement of 180 classroom hours, which may include the 90 classroom hours requirement for the licensed classification and/or the 120 classroom hours requirement for the certified residential classification of courses in subjects related to real property appraisal which shall include the 15-hours National USPAP Course and examination and successful completion of the AQB approved Uniform State Certified General Appraiser Examination; and

- (c) proof that the applicant has performed at least 3,000 hours of appraisal experience obtained during no fewer than 30 months, of which 1,500 hours must be in non-residential appraisal work.
- B. Credit awarded for the continuing education requirement may also be awarded for the classroom hour requirement when an individual seeks a different classification than that held, provided the education offering meets the criteria established for the classroom hour and continuing education requirements.
- 6.11 Criminal Conviction. When an applicant has been convicted of felony or a crime related to the appraisal profession the Board may request the following documents from the applicant: copies of any court records, orders, or other documents that state the facts and statutes upon which the applicant was convicted, the verdict of the court with regard to that conviction, the sentence imposed, and the actual terms of the sentence.

#### 6.12 Denial or Rejection of Application.

- A. An application for issuance of a license shall be denied when an application is insufficient or incomplete or when an applicant has failed to provide satisfactory proof that the applicant meets the requirements hereunder. In addition, the Board may deny issuance of a license:
  - 1. When the applicant is known to have committed any of the acts for which a license may be suspended or revoked hereunder.
  - 2. If the applicant fails to demonstrate that the applicant possesses a good reputation for honesty, truthfulness, fairness and financial integrity; or
  - 3. If the applicant has had disciplinary action taken by any jurisdiction, including any federal or state regulatory body.
- B. An applicant shall be automatically rejected and the applicant shall be denied licensure when the applicant, after having been notified to do so:
  - 1. Fails to pay the appropriate fees within sixty days from notification; or
  - 2. Fails to submit, after notification, any of the information or documentation requested to comply with any of the requirements for licensure within sixty days of notification.

- C. Any application which has been denied or rejected shall remain in the possession of the Board and shall not be returned.
- D. An applicant, whose application has been denied or rejected, may file for an administrative hearing as provided under applicable law and regulations.
- 6.13 Term. All licenses expires two years following its issuance or renewal and becomes invalid after that date unless renewed.

#### PART VII. TEMPORARY PRACTICE

- 7.1 Temporary License. The Board may grant a temporary license to a person who desires to practice on a temporary basis, provided that such person is legally qualified and licensed in his or her jurisdiction and that his/her qualifications for obtaining the license meet those required for licensure by this Board and further provided that:
  - the person's business is of a temporary nature; and a)
  - b) the appraiser applies for the temporary license.
  - A temporary license shall be used to appraise only one assignment which length Α. of time not to exceed one year and shall provide that there is no right to practice real property appraisal with respect to any other works not set forth in the temporary license.
  - В. A temporary license may be extended but only for the purpose of completing the specific job for which the original temporary license was issued.

#### 7.2 Requirements.

- Application for licensure for temporary practice shall be made under oath or under penalty of perjury as permitted under CNMI law on a form to be furnished by the Board. The form may require the applicant to provide items above mentioned, and in addition, the applicant shall:
  - (a) submit evidence of current license from the other jurisdiction;
  - submit a copy of the contract for appraisal services that requires the applicant to appraise real property in the CNMI and certify that such contract is in full force and effect:
  - certify that disciplinary proceedings are not pending against the applicant in any jurisdiction;

- (d) agree, in writing, to conform with all the provisions of these regulations; and
- (e) file a designation in writing appointing the Board to act as the applicant's agent upon whom all judicial and other process or legal notices directed to the applicant may be served. The applicant shall agree that service upon the Board shall have the same legal force and validity as if personally served upon the applicant when such judicial or other process or legal notice is related directly or indirectly to a license or certificate issued by the Board. The Board shall immediately forward such judicial or other process or legal notice to the licensee by the mailing of such document certified mail, return receipt requested, to the last address which the licensee has provided the Board. The Board's compliance with the notification requirement as provided herein shall conclude the Board's liability and notification responsibility of the licensee.

#### PART VIII. RENEWAL

- 8.1 Date of Filing for Renewal. A renewal notice shall be mailed by the Board a month before the expiration date to appraisers whose license is expiring. All licensed appraisers shall request in writing to the Board if they wish to renew their license and must submit proof of the required completed continuing education hours and the renewal fee on or before the date of expiration. The required documents with the renewal fee sent by United States mail shall be considered timely filed if the envelope bears a postmark no later than the date of expiration.
- **8.2** Failure to Renew. The failure to timely renew the license, pay the applicable fees, submit the required continuing education hours, or paying fees with a check which is dishonored upon first deposit shall cause the license to be automatically invalid.
- 8.3 Reinstatement of an Invalid License.
  - A. Licenses which have expired for failure to renew on or before the date herein above required may be reinstated within one year of the expiration date provided the applicant pays the appropriate fees, and submits all continuing education hours that would have been required had the licensee maintained licensure.
  - B. Each individual whose license has expired and lapsed for more than one year by failure to renew must file a new application, meet current requirements and receive board approval for licensure.
- 8.4 Board May Refuse to Renew or Reinstate License.

- A. The Board may refuse to renew or **reinstate** a license for failure or refusal of the licensee:
  - 1. To properly complete or timely submit the renewal application form and submit all fees and required documentation;
  - 2. To maintain a good reputation for honesty, truthfulness, fairness and financial integrity;
  - 3. To meet and maintain the conditions and requirements necessary to qualify for the issuance of the license; or
  - 4. To comply with **the law and** these regulations.
- B. An applicant, whose application has been refused by the Board to be renewed or reinstated for the above reasons may file for an administrative hearing as provided by law.

#### 8.5 Inactive Status.

- A. A license may be placed on an inactive status upon notification to the Board by the licensee in writing of the effective date of inactivation and payment of an inactive file.
- B. A licensee on inactive status shall be considered as unlicensed or uncertified.
- C. Failure to reactivate a license on inactive status after two years shall render the license null and void and appraiser must apply as a new applicant and meet current licensing requirements.
- D. Misrepresentation of inactive status on the practice of real property appraisal shall be grounds for disciplinary action.

#### 8.6 Requirements to Reactivate.

- A. An inactive licensee may apply for reactivation upon payment of all fees due owing from time of inactivity and proof of completion of all continuing education hours the applicant would have had to submit if the applicant has maintained licensure from the date of inactivation.
- B. Failure to meet the requirements for reactivation shall require a person desiring licensure to apply as a new applicant.

#### PART IX. SCOPE OF APPRAISERS

- **9.1 Supervision of Appraiser Trainees.** Licensed appraisers may directly supervise appraiser trainees provided:
  - A. The appraiser trainee is a bona fide employee of the licensed appraiser, or an employee of the same entity who employs the licensed appraiser; and
  - B. The licensed appraiser signs the report attesting the acceptance of the appraisal as being independently and impartially prepared and in compliance with the USPAP.

### 9.2 Use of Terms "Licensed Appraiser", and "Certified Appraiser".

- A. The terms "licensed real property appraiser," "certified residential real property appraiser", and "certified general real property appraiser" for federally related transactions and "licensed residential real property appraiser", and "licensed general real property appraiser" for non-federally related transactions, may only be used to refer to an individual who is licensed, federally or non-federally related transactions, as the case may be, under these regulations and may not be used following, or immediately in connection with, the name or signature of a corporation, partnership, association, or any group practice, or in any manner that might be interpreted as referring to anyone other than the individual who is licensed.
- B. This requirement shall not be construed to prevent a licensee from signing an appraisal report on behalf of a corporation, partnership, association, or any other group practice if it is clear that only the individual is licensed and the corporation, partnership, association or group practice is not.
- C. No person may assume or use the title "licensed real property appraiser", "certified residential real property appraiser", and "certified general real property appraiser" for federally related transactions, or "licensed residential real property appraiser", and licensed general real property appraiser" for non-federally related transactions, as the case may be, or any title designation or abbreviation likely to create the impression of licensure unless that person holds a current license hereunder.
- 9.3 Real Estate-Related Financial Transactions Not Requiring Appraisal by a Licensed or Certified Appraiser. An appraisal performed by a Licensed or Certified appraiser (federally related transaction) is not required for any real property-related financial transaction in which:

- A. The transaction value is at or below the de minimus level established by a federal financial institutions regulatory agency;
- B. A lien on real property has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not have been more favorable than it would have been in the absence of the lien:
- C. Real property is leased unless the lease is the economic equivalent of a purse or sale of the leased real property;
- D. There is a renewal of an existing transaction in which the maturity and amortization of the obligation are intentionally mismatched for re-pricing or credit quality consideration, provided that:
  - 1. The borrower has performed satisfactorily according to the original terms;
  - 2. No new monies have been advanced;
  - 3. The credit standing of the borrower has not deteriorated; and
  - 4. There has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection.
- E. A regulated institution purchases a loan or interest in a loan, pooled loan, or interests in real property, including mortgage-backed securities, provided that the appraisal prepared for each pooled loan or real property interest met the requirements of this part, if, applicable, at the time or origination.

### 9.4 Non-Applicability to Real Estate Brokers or Real Estate Salespersons.

These regulations shall not apply to a real estate broker or salesperson, who, in the ordinary course of the real estate broker's or salesperson's business, gives an opinion as to the recommended listing price of real property or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate, provided:

- A. The opinion as to the listing or the purchase price shall not be referred to as an appraisal;
- B. No compensation, fee, or other consideration is charged for such opinion other than the normal brokerage fee rendered in connection with the sale of the property; or
- C. No misrepresentation is made that the real estate broker or salesperson is a Certified or Licensed real property appraiser.

#### PART X. APPRAISAL STANDARDS

#### 10.1 Appraisal Standards for Federally Related Real Property Transactions.

- A. For federally related real property transactions valued at or above the de minimus level established by a federal financial institutions regulatory agency, all appraisals shall be performed by a Licensed or Certified appraiser and shall, at a minimum:
  - (a) perform and practice in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), as amended.
  - (b) be based upon the definition of market value as defined in these regulations;
  - (c) be written and be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate; and provide detail and depth of analysis that reflect the complexity of the real property appraised which can be readily understood by a third party;
  - (d) analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following minimum time periods:
    - for one-to-four family residential property, one year preceding the date when the appraisal was prepared; or
    - ii) for all other property, three years preceding the date when the appraisal was prepared.
  - (e) analyze and report data on current rents and current vacancies for the subject property if it is and will continue to be income-producing;
  - **(f)** analyze and report data on current revenues, expenses and vacancies for the subject property if it is and will continue to be income producing;
  - (g) analyze and report a reasonable marketing period for the subject property and disclose the assumptions used;
  - analyze and report on current market conditions and trends such as, but (h) not limited to increasing vacancy rates, greater use of rent concessions, or declining sales prices that will affect projected income of the absorption period, to the extent they affect the value of the subject property;
  - (i) analyze and report appropriate deductions and discounts for any proposed construction, or any completed properties that are partially leased or leased at other than market rents as of the date of the appraisal, or any tract developments with unsold units:
  - (i) include in the certification required by the USPAP, an additional statement that the appraisal assignment was not conditioned upon the appraisal producing a specific value or a value within a given range or on whether a loan application is approved;

- (k) contain sufficient supporting documentation with all pertinent information reported including acceptance or rejection of a third party study and its impact on value so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a final conclusion will enable the reader to understand the reasonableness of the conclusion:
- (1)include a legal description in addition to, and not in lieu of, the description required in the USPAP of the real property being appraised;
- identify and separately value any personal property, fixtures, or intangible items that are not real property but are included in the appraisal, and discuss the impact of their inclusion, or exclusion, on the estimate of the market value; and
- follow a reasonable valuation method that addresses the direct sales comparison, income,, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used.
- B. If information required or deemed pertinent to the completion of an appraisal is unavailable, that fact shall be disclosed and explained in the appraisal report.
- C. An appraiser shall perform all appraisals, reviews, or consultations with impartiality, objectivity, and independence, without any direct or indirect interest in the property.

#### 10.2 Signature on Appraisal Reports.

- If an appraisal report is prepared and signed by CNMI Licensed appraiser, the appraisal report shall state, immediately following the signature on the report, "CNMI Licensed Appraiser" and the appraiser's license number and expiration date.
- В. If an appraisal report is prepared and signed by a CNMI Certified appraiser, the appraisal report shall state, immediately following the signature on the report, "CNMI Certified Appraiser" and the appraiser's license number and expiration date.
- C. Appraisal reports prepared by an appraiser trainee shall be approved and signed by a Licensed or Certified appraiser.

#### 10.3 Records and Appraisal Report Retention Requirement.

A. Every licensed appraiser shall retain originals or true copies of appraisal contracts, appraisals, and all supporting data and documents for a period of five years.

- B. The five-year period shall commence upon date of delivery of the appraisal report to the client, provided that; if the appraiser is notified that the appraiser or appraisal report is involved in litigation, the five-year period shall commence upon the date of the final disposition of the litigation.
- C. The appraiser shall make all records available, upon request, to the Board or the Board's authorized delegate.

#### PART XI. ADVERTISING PRACTICES

11.1 Advertising Practices. A licensee advertising through any media shall be identified as a Licensed Real Property Appraiser - Federally Related Transactions, Certified Residential Real Property Appraiser - Federally Related Transactions, Certified General Real property Appraiser - Federally Related Transactions, Licensed Residential Real Property Appraiser - Non-Federally Related Transactions, or Licensed General Real Property Appraiser - Non-Federally Related Transactions by listing the appropriate designated licensed or certified status and the appraiser's license number. For purposes of this section, "media" includes, but is not limited to, newspapers, magazines, calling cards, and directories, including all listing in telephone directories.

# PART XII. GROUNDS FOR REVOCATION, SUSPENSION, PROBATION, REFUSAL TO RENEW OR REINSTATE, DENIAL OR CONDITIONING OF LICENSES

12.1 Grounds for Revocation, Suspension, Probation, Refusal to Renew or Reinstate, Denial, or Conditioning of Licenses.

In addition to any other acts or conditions provided by law, the Board may revoke, suspend, place on probation, refuse to renew or reinstate, deny, or condition in any manner, any license for any one or more of the following acts or conditions:

- A. Procuring a license through fraud, misrepresentation, or deceit; or
- B. Failing to meet or maintain the requirements or conditions necessary to qualify for licensure; or
- C. Acting negligently or incompetently or failing without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal; or

- D. Failing to comply with the Uniform Standards of professional Appraisal Practice, as amended: or
- E. Performing for any valuable consideration, an appraisal assignment that is contingent upon the appraiser reporting a predetermined estimate, analysis or opinion or upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment; or
- F. Conviction of, or pleading nolo contendre to any felony or any crime that is related to the qualification, functions, or duties of an appraiser; or
- G. Entrance against the appraiser of a civil or criminal judgment on grounds of fraud, misrepresentation, or deceit in the development or communication of an appraisal; or
- H. Committing any act or omission in the practice of real **property** appraising which constitutes dishonesty, fraud, or misrepresentation with the intent to substantially benefit the appraiser or another person or with the intent to substantially injure another person; or
- I. Accepting an appraisal assignment if the employment or fee is contingent upon:
  - 1. The appraiser reporting a predetermined estimate, valuation, analysis, or opinion; or
  - 2. The consequences resulting from the appraisal assignment.
- J. Engaging in the business of real **property appraisal** under an assumed or fictitious name not properly registered; or
- K. Paying a finders or a referral fee to a person who is not a licensed appraiser or in connection with appraisal of real property in the Commonwealth; or
- L. Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications; or
- M. Aiding or abetting an unlicensed person to directly or indirectly evade these regulations; or
- N. Violating any conditions or limitations upon which the license was issued; or
- O. Failing to report to the Board, in writing, any disciplinary decision issued against the licensee in another jurisdiction; or

- P. Violating the provisions of the law or these regulations or any order of the Board.
- 12.2 **Hearings.** Any proceeding before the Board to take disciplinary action or other sanctions against a licensed appraiser shall be conducted pursuant to 1 CMC, Section 9109 Administration Procedures - Conduct of Hearings.

#### PART XIII. REINSTATEMENT OF LICENSE

- 13.1 Reinstatement of Suspended License. A person whose license has been suspended may apply for reinstatement of the license upon complete compliance with any term or condition imposed by the order of suspension. The application for reinstatement shall be accompanied by the appropriate fees, application, required continuing education hours, and/or any other additional documents or information the Board deems appropriate.
- 13.2 Revoked License. Upon the expiration of at least two years from the effective date of the revocation of the license, a person may apply for a new license by filing an application and complying with all current requirements for new applicants. granting or denying of such application shall be at the discretion of the Board after evaluating such application consistent with the statutory and regulatory requirements relating thereto.
- 13.3" Relinquishment No Bar to Jurisdiction. The forfeiture, non-renewal, surrender, or voluntary relinquishment of a license by an appraiser shall not bar jurisdiction by the Board to proceed with any investigation, action, or proceeding against the appraiser to revoke, suspend, condition or limit the appraiser's license.
- 13.4 Judicial Review. Any person aggrieved by a final decision and order of the Board in a contested case is entitled to judicial review thereof according to law.

#### PART XIV. UNAUTHORIZED PRACTICE AS AN APPRAISER

No Compensation for Unauthorized Activity; Civil Action. The failure of any person 14.1 to maintain a current and valid license prior to engaging in any activity requiring licensure by the Board shall prevent such person from recovering in a civil action for work or services performed on a contract or on any legal basis to recover the reasonable value thereof.

### PART XV. PUBLICATION OF ROSTER

15.1 **Publication of Roster.** The Board shall prepare annually, a roster showing the name and place of business of each individual holding a license as a CNMI Licensed appraiser or a CNMI Certified appraiser. The roster shall be sent to the Appraisal Subcommittee by January 15 of each year.

#### PART XVI. FEES

16.1	Fees.	The fees for licensure shall be as follows:
	A.	Application Fee
	B,	Licensure Fee\$100.00
	<b>C</b>	Registry Fee (2-year period)
		To be transmitted to the Appraisal Subcommittee.
	D.	Temporary Practice Application & License Fee\$125.00
	E.	Renewal Fee
	F.	Inactive Fee
	G.	Reactivation Fee
	H.	Reinstatement Fee
	I.	Examination Fee shall be as provided by contract with a professional testing
		Organization.
	J.	Local Examination Fee

The application fees shall be nonrefundable. The registry fees may be increased if the Appraisal Subcommittee so informs the Board of the increase, and may be imposed on licensees without hearing. Failure to pay an increase of the registry fee within sixty days of notification to do so shall result in license automatically invalid.

- 16.2 Form of Fee. The fees, if in the form of money order or check, shall be made payable to the CNMI Treasurer.
- 16.3 Dishonored Checks Considered Failure to Meet Requirements.

The dishonoring of any check upon first deposit shall be considered a failure to meet requirements.

- 16.4 Fees Deposited; Transmittal Appraisal Subcommittee
  - Α. All fees shall be deposited in the general fund of the CNMI.
  - В. The registry fees shall be transmitted by the Board to the Appraisal Subcommittee annually as required by law.

#### PUBLIC NOTICE

#### AMENDMENTS TO THE REGULATIONS OF THE COMMONWEALTH ELECTION COMMISSION

Pursuant to the authority granted the Commonwealth Election Commission by \$ 6105 of Public Law 12-18, as amended, to promulgate rules and regulations governing elections in the Commonwealth, the Commonwealth Election Commission, acting through its Chairman and on its behalf is proposing these amendments to the regulations that will provide the requirement for the design of voting ballots. The amendment changes the ballot design to require that candidates for offices are placed together by race and that the political party affiliation of candidates, if any, are placed under the candidate's name. This is a change from ballot designs for past elections wherein candidates names are placed within a columnar format designated for recognized political parties or for independent candidates, if a candidate is not nominated by a recognized or new political party.

The amendment to the regulations may be inspected at, and copies obtained from, the Commonwealth Election Commission's offices at 1313 Anatahan Drive, Capitol Hill, Saipan. The amendments to the regulations are also published in the Commonwealth Register. The Commonwealth Election Commission is soliciting comments on the amendments to the regulations from the general public.

Anyone interested in commenting on the amendments to the regulations may do so in writing to the Commonwealth Election Commission, P.O. Box 500470, Saipan, MP, 96950-0470. Written comments may also be delivered to the Commonwealth Election Commission's offices or faxed to (670) 664-8689. All comments must be in writing and must be received in 30 days from the date this notice is published in the Commonwealth Register.

The Commonwealth Election Commission adopted this amendment on December 17, 2004.

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Certified by:	- No Wo-	12-20-04
ř	MIGUEL M. SABLAN	Date
	Chairman	
	Commonwealth Election Commission	
Filed by:	Sdela Criz	02.07.05
,	Bernadita B. Dela Cruz	Date
	Commonwealth Registrar	
	$\langle \lambda \rangle / \langle \lambda \rangle$	
	Thom ww	18/03
Received by:	Thomas A. Tebutel	Date
	Special Assistant for Administration	
	Executive Offices of the Governor	

Pursuant to 1 CMC \$ 2153, as amended by P.L. 10-50, the rules and regulations attached hereto have been reviewed and approved by the CNMI Attorney General.

Attorney General

#### NOTISIAN PUPBLIKU

## MAN MA'AMENDA NA REGULASION SIHA GI KUMISION **BOTASION I COMMONWEALTH**

Sigun i aturidat ni ma'entrega i Kumision i Botasion i Commonwealth ginen Seksiona 6105 gi Lai Pupbliku 12-18, ni maamenda, para hu establesi areklamento yan regulasion siha ni ginibebietna i Botasion gi Commonwealth, i Kumision i Botasion gi Commonwealth, mu'a'akto ginen i Kabiseyo mapropopone este na amendasion siha para i regulasion ni para hu probeniyi i nisisidat para i tinilaika siha gi balotun botasion. I tinilaika siha na amendasion gi balotu manisisita i kandidatun i ofisina siha hu mana fan etnun gi rasa yan gi patidan-niha, yanggen guaha, man mapega gi papa i na'an i kandidatu. Estague i tinilaika ginen i balotu para i man mapus na botasion anai i na'an i kandidatu man mapega gi fotmasion lucha ni madesigna para hu rekognisa i patidan politika pat indipendente na kandidatu, yanggen i kandidåtu ti matanchu'i' ginen i marekognisa pat nuebu na patidan politika

I amendasion para i regulasion siha siña ma'eksamina yan siña man machule' kopia siha ginen, i Ofisinan i Kumision Botasion i Commonwealth gi 1313 Anatahan Drive, gi Capitol Hill, giya Saipan. I amendasion i regulasion siha man mapupblisa lokkue gi Rehistran i Commonwealth. I Kumision Botasion i Commonwealth man gågågao opinion siha pot i amendasion i regulasion gi pupbliku henerat.

Maseha håye' enteresao man nå'i' opinion pot i amendasion para i regulasion siha siña ha' tugi'e' guatto i Kumision Botasion i Commonwealth, P.O. Box 500470, Saipan, MP 96950-0470. Siña lokkue ma'entrega guatto i Ofisinan i Kumision Botasion i Commonwealth ni tinige' opinion pat sino fax guatto gi (670) 664-8689. Todu i tinige' debi di umarisibe'gi halom trenta (30) diha siha desde i fechan este na notisia anai mapupblika gi Rehistran i Commonwealth.

I Kumision Botasion i Commonwealth ma'adopta este na amendasion gi Disiembre 17, 2004.

Masetifika as:	Miguel M. Sablan Kabiseyo Kumision Botasion i Commonwealth	12-20-04 Fecha
Pinelo' as:	Bernadita B. Dela Cruz Rehistran i Commonwealth	02-07-05 Fecha

Marisibe' as:	78/0V
Thomas A. Tebuteb	Fecha/
Espisiåt Na Ayudånte Para i Atministr	asion
Ofisinan Eksekatibu gi Gubietno	
Sigun i lai 1 CMC Seksiona 2153, ni ma'amenda gine regulasion siha ni man che'che'ton guine man maribis Henerat i CNMI.	<del>_</del>
Abugådo Henerat	Fecha

### MWIISCHIL FFIL MELLOL <u>COMMONWEALTH</u> COMMONWEALTH TEEL FALUWASCH MARIANAS

Sangi bwangil Mwiischil ffil mellol Commonwealth (CEC) re mweiti ngali mereel talil 6105 reel Alleghul Toulap 12-18 ye aa lliwello, igha ebwe akkate allegh me ammwel kkaal ye e lemeli ffil (election) mellol Commonwealth. Mwiischil ffil mellol Commonwealth, e mwoghut faal bwangil Samwoolul mwiisch reel pomwol lliwel kkaal me ngali allegh kka ekke sobweey igha ebwe ayoora tingorol ssiwel reel scheel ffil (balooto). Lliwel kkaal e ssiweli mwoghutul balooto kkaal bwelle ebwe yaaya ngali kkandidoto ngali bwulasiyo kkaal igha rebwe aschuur reel tappal aramas (roosa) me ital mwiischil politikka faal iteer ngare eyoor. Lliwel kkaal nge e ssiwel sangi scheel ffil kkewe ighiwe, igha iteer kkandidoto e taletiw faal ital mwiischil politikka me ngare independent, ngare ese yoor yaal mwiischil politikka, me ngare iye e ffe mwischil politikka

#### ARONGOL TOULAP

#### LLIWEL KKAAL NGALI ALLEGHUL MWIISCHIL FFIL MELLOL COMMONWEALTH

Sangi bwangil Mwiischil ffil mellol Commonwealth (CEC) re mweiti ngali mereel talil 6105 reel Alleghul Toulap 12-18 ye aa lliwello, igha ebwe akkate allegh me ammwel kkaal ye e lemeli ffil (election) mellol Commonwealth. Mwiischil ffil mellol Commonwealth, e mwoghut faal bwangil Samwoolul mwiisch reel pomwol lliwel kkaal me ngali allegh kka ekke sobweey igha ebwe ayoora tingorol ssiwel reel scheel ffil (balooto). Lliwel kkaal e ssiweli mwoghutul balooto kkaal bwelle ebwe yaaya ngali kkandidoto ngali bwulasiyo kkaal igha rebwe aschuur reel tappal aramas (roosa) me ital mwiischil politikka faal iteer ngare eyoor. Lliwel kkaal nge e ssiwel sangi scheel ffil kkewe ighiwe, igha iteer kkandidoto e taletiw faal ital mwiischil politikka me ngar independent, ngare ese yoor yaal mwiischil politikka, me ngare iye e ffe mwischil politikka

Pomwol lliwel kkaal ngali allegh kkaal nge emmwel rebwe amweri, me kkopia kka rebwe bwughi mereel, Bwulasiyool <u>Commonwealth Election Commission</u> mereel 1313 Anatahan Drive, Capital Hill, Seipel. Pomwol lliwel kkaal me allegh kkaal ikka aa akkateewow mellol <u>CommonwealthRegister.</u> Mwiischil ffil mellol Commonwealth ekke tittingor aghiyegh reel pomwol lliwel kkaal ngali allegh kka e tooto mereel aramas toulap.

Schookka eyoor mangemangiir reel pomwol lliwel me allegh kkaal nge emmwel rebwe ischilong reel <u>Commonwealth Election Commission</u>, P.O Box 500470, Seipel, MP, 96950-0470. Ischil aghiyegh nge emmwel rebwe afangaalo reel Bwulasiyool <u>Commonwealth</u> Mwiischil ffil mellol me ngare fax reel (670) 664-8689. Alongal aghiyegh nge rebwe ischilong me rebwe bwughil otol eliigh (30) raalil sangi raalil yaal akkateewow mellol <u>Commonwealth Register</u>.

Mwiischil ffil mellol Commonwealth ebwe fillooy lliwel yeel wool December 17, 2004.

Alughulugh sangi:  MIGUEL M. SABLAN  Assamwoolul  Commonwealth Election Commission	12-20-0 <del>f</del> RAL
Aisis sangi:  Bernadita Dela Cruz  Commonwealth Register  Mwir sangi:  Thomas A. Tebuteb  Sow Alillisil Sow Lemelem	$\frac{02-07-05}{Ral}$ Ral
Sangi allegh ye 1CMC talil 2153, ye aa lliwel mere e appasch nge raa takkal amweri fischiiy mereel C	NMI Sow Bwungul Allegh Lapalap.
Sow Bwungu	l Allegh Ral

### AMENDMENTS TO SECTIONS 5.1 AND 5.2 OF THE REGULATIONS OF THE COMMONWEALTH ELECTION COMMISSION

Sections 5.1 and 5.2 of the Commonwealth Election Commission's Regulations published in the Commonwealth Register Volume 23, Number 3, on March 22, 2001, page 17733 to 17734, is hereby amended to read as follows:

### Section 5 Voting Procedures

Section 5.1 Voting Ballot. The Commonwealth of the Northern Mariana Islands currently uses the paper ballot method of voting. Prior to the election, the Commission shall print a ballot for each voting precinct on paper which shall list all candidates who have met the requirements to be listed on the ballot. In addition to the names of the candidates, the candidate's political party affiliation, if any, shall be listed on the ballot as well as the office that each candidate seeks. In the case of offices such as Municipal Council and Board of Education, or Independently nominated candidates for any office no political party affiliation shall be listed, as those offices or candidates are by their very nature considered non-partisan. No independently nominated candidate who previously had a political affiliation may use that affiliation unless he is nominated for that office by that political party.

> All candidate names shall be printed with a sufficient font size for all voters to read, but no candidate shall have a different font size than any other candidate. The ballot shall be organized by race or offices wherein the names of candidates for a particular office or offices shall be placed together identified as candidates for a particular office and the name of the candidate's political party or independent candidacy shall be placed immediately under the candidate's name on the ballot in a columnar format for each political party or independent nomination of candidacy that is listed at the top of the ballot above the names of the nominated candidate for each office. The columns shall as nearly as possible be equal in size except where a candidate's name requires additional space then that column will provide that additional space to accommodate the name of the candidate.

Section 5.2 Design and Non-Contestability of Ballot. The staff of the Commission shall have the primary responsibility for the design of the ballot. The Election Commission shall have final approval over the design of the ballot. After the Election Commission publishes the ballot a specimen copy of the ballot shall be made available in Saipan, Tinian and Rota for public viewing upon reasonable request. The design of the ballot as

approved by the Election Commission shall be final and non-contestable in any Commonwealth Court or United States Court.

Prior to the final publication of the ballot the candidate locations (position or row) and columns for the political parties on the ballot for the various offices shall be designated by a number corresponding to their location (position or row). On a date designated by the executive director commission staff a representative of the political parties and the candidates (or their representatives) will select random numbers (corresponding to those ballot location numbers) out of a paper bag or hat in such a manner that the person choosing the number has no way of knowing which number they are choosing. The executive director shall conduct these drawings. The first drawing will be for the political parties columnar position on the ballot. The second drawing will be for the individual candidate locations (position or row) on the ballot where there are multiple (at least two) candidates for a particular race or office or offices from one political parties and the candidates (or their representatives) shall then correspond to those pre-designated number locations on the ballot. Any person can act as a representative of more than one candidate, for instance the Chairman of a new or recognized political party may act as the representative for all of their party's candidates.

## Comments received on proposed ballot design:

Date 5/20/04	Commentator Rep. OB Babauta	Issue Suggests that the instructions "VOTE FOR NO MORE THAN ONE (1)" and other similar instructions be underlined and be in bold letters.
5/25/04	Rep. MB Ada	Suggests that names of candidates be arranged alphabetically rather than by the draw of lots.
5/25/04	Municipal Council	Recommends color coding. Inhibitive and would distort voters' view if each candidate's name is color coded.
5/26/04	Judge Wiseman	Strongly recommends that the word retain carry with it a footnote or other form of a simple definition or actual meaning of the word and offers the following as an example:
		A vote "yes" on the retention means that a Judge will be kept in office and a vote "No" means the judge will not be kept in office.
		Judge Wiseman further feels that the word retain is not a commonly used everyday word in the English language and it is a word associated with people thinking of school days when a child is held back from the next grade level, and therefore, has a negative implications.
		The Commission should note that the word "retained" comes directly from the NMI Constitution and the question comes entirely from the Constitution.
6/04	Ruth Tighe	Suggests that nicknames be allowed.
6/15/04	Rep. AI Palacios	Suggests that parties be allowed to draw lots for positions and that candidates within each party also then draw lots for position.
6/22/04	Rep. JT Attao	Suggests that names be positioned alphabetically. Otherwise he supports the changes to the new design.
12/15/04	CJ Demapan AJ Castro PJ Naraja J Wiseman	Request that the title or caption (Judge's Retention Question) on the ballot be removed from the ballot since it is not required by the NMI Constitution.
		The Caption will thus on read: VOTE YES OR NO.

#### SAMPLE GENERAL ELECTION BALLOT COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS NOVEMBER 3, 2001

Example "B"

Election District No. 1

#### INSTRUCTIONS:

O VILLAGOMEZ, THOMAS PANGELINAN

(Republican)

- VOTE FOR THE CANDIDATE OF YOUR CHOICE IN EACH RACE BY DARKENING IN THE OVAL ( ) PROVIDED
  TO THE LEFT OF THE NAME OF THE CANDIDATE.
- VOTE FOR NO MORE CANDIDATES THAT THERE ARE OFFICES TO BE FILLED. IF YOU VOTE FOR MORE
  CANDIDATES THAN THERE ARE OFFICES TO BE FILLED, YOUR VOTE WILL NOT BE COUNTED FOR THAT
  RACE.

#### Municipal Council House of Representatives Governor/Lieutenant Governor **VOTE FOR NO MORE THAN SIX (6)** VOTE FOR NO MORE THAN THREE (3) **VOTE FOR NO MORE THAN ONE (1)** O DELEON GUERRERO, GREGORIO O ADA, MARTIN BORIA O BABAUTA, IUAN NEKAV VILLAGOMEZ BENAVENTE, DIEGO TENORIO (Republican) (Republican) O INDALECIO, DAVID ALDAN O CABRERA, JAMES DUENAS O BORJA, JESUS CAMACHO! (Democratic) O SABLAN, ALEXANDER **ICHIHARA, BRIGIDA DELEON** O CAMACHO, ANTONIO MUNA PANGELINAN **GUERRERO** (Covenant) (Democratic) **Board of Education** O CASTRO, PEDRO PANGELINAN VOTE FOR NO MORE THAN ONE (1) O FITIAL, BENIGNO REPEKT (Republican) INOS, RITA HOCOG O CEPEDA, BENJAMIN MATAGOLAI (Covenant) O ARRIOLA, PEDRO COGURE (Covenant) O TENORIO, FROILAN CRUZ/ O CASTRO, IESUS MANIBUSAN O DELEON GUERRERO, FLORENCIO SABLAN, DAVID CASTRO O GUERRERO, HERMAN TENORIO (CNMI Reform) **TENORIO** (Democratic) Resident Representative to the US O DELEON GUERRERO, IOSEPH VOTE YES OR NO VOTE FOR NO MORE THAN ONE (1) **PINAULA** (Republican) **SHALLJUDGE** O DELON GUERRERO, HERMAN O DEMAPAN, FRANCISCO DELEON VIRGINIA SABLAN ONERHEIM ROGOLOFOL OF THE COMMONWEALTH **GUERRERO** (Covenant) (Covenant) SUPERIOR COURT O MCPHETRES, AGNES MANGLONA BE RETAINED IN OFFICE? O MARATITA, JANET ULLOA (Democratic) (Covenant) O YES O TENORIO, PEDRO AGULTO O MUNA, JACK CAMACHO (Republican) (Democratic) O NO O PALACIOS, HERMAN TUDELA Mayor of Saipan VOTE FOR NO MORE THAN ONE (1) (Republican) O PITEG. BENUSTO LIFOIFOI O CEPEDA, FRANK GUERRERO (CNMI Reform) O SABLAN, GEORGE AYUYU (Republican) O GUERRERO, JESUS TENORIO (Covenant) (CNMI Reform) O SABLAN, PEDRO CABRERA O MAFNAS, JOSE PANGELINAN (CNMI Reform) (Independent) O SEMAN, BENJAMIN BENAVENTE O TUDELA, JUAN BORJA (Republican) (Democratic) O TAITINGFONG, ATANACIO AYUYU (Covenant) Senate O TENORIO, MANUEL AGULTO **VOTE FOR NO MORE THAN TWO (2)** (Republican) O TUDELA, ANTONIA MANIBUSAN O APATANG, DAVID MUNDO (CNMI Reform) (Covenant) O TUDELA, JUAN CEPEDA O CRISOSTIMO, LUIS PALACIOS (Democratic) (Democratic) O GONZALES, JOHN OLIVER **DELOS REYES** (Covenant) O QUITUGUA, JOAQUIN TERLAJE (CNMI Reform) O REYES, PETE PANGELINAN (Republican)

023976

#### **PUBLIC NOTICE**

### PROPOSED AMENDMENTS TO THE REGULATIONS OF THE COMMONWEALTH ELECTION COMMISSION

Pursuant to the authority granted the Commonwealth Election Commission by \$ 6105 of Public Law 12-18, as amended, to promulgate rules and regulations governing elections in the Commonwealth, the Commonwealth Election Commission, acting through its Chairman and on its behalf is proposing these amendments to the regulations which will no longer require the use of ink stain in commonwealth elections as proof of voting.

The proposed amendments to the regulations may be inspected at, and copies obtained from, the Commonwealth Election Commission's offices at 1313 Anatahan Drive, Capitol Hill, Saipan. These proposed amendments to the regulations are also published in the Commonwealth Register. The Commonwealth Election Commission is soliciting comments on these proposes amendments to the regulations from the general public.

Anyone interested in commenting on these proposed amendments to the regulations may do so in writing to the Commonwealth Election Commission, P.O. Box 500470, Saipan, MP, 96950-0470. Written comments may also be delivered to the Commonwealth Election Commission's offices or faxed to (670) 664-8689. All comments must be in writing and must be received in 30 days from the date this notice is published in the Commonwealth Register.

The Commonwealth Election Commission adopted this amendment to its Regulations on February 11, 2005

Certified by:	- Www	2-11-05
	MIGUEL M. SABIAN	Date
	Chairman \	
	Commonwealth Election Commission	
Filed by:	Bolela Orun	2.15.05
•	Bernadita B. Dela Cruz	Date
	Commonwealth Registrar	
	Allow the	1/8/01
Received by:	Thomas A. Tebuteb	Date
•	Special Assistant for Administration	
	Executive Offices of the Governor	

Pursuant to 1 CMC § 2153, as amended by P.L. 10-50, the rules and regulations attached hereto have been reviewed and approved by the CNMI Attorney General.

#### **NOTISIAN PUPBLIKU**

# MA PROPONE NA AMENDASION SIHA KONTRA I REGULASION KUMISION BOTASION I COMMONWEALTH

Sigun i aturidåt ni ma'entrega i Kumision Botasion i Commonwealth gi Seksiona 6105, Lai Pupbliku 12-18, ni ma'amenda, para hu fatinas areklamento yan regulasion ni ginibebetna i botasion siha gi hålom i Commonwealth, i Kumision Botasion i Commonwealth enkuenta de i Kabiseyo, ha propone este na amendasion gi regulasion na esta ti nisisårio i måtkan tinta (ink) kumo Prebasion botu.

I ma propone na amendasion siha gi Regulasion siña man ma rikonosi, ya man mañule' kopia siha gi Ofisinan i Kumision Botasion i Commonwealth gi 1313 <u>Anatahan Drive</u>, gi <u>Capitol Hill</u>, giya Saipan. Este i ma propopone siha na areklamento yan amendasion kontra i regulasion man ma pupblika lokkue gi Rehistran i Commonwealth. I Kumision Botasion i Commonwealth ha fafaisen i sinentin pupbliku heneråt pot priniponen i amendasion i regulasion siha.

Håye' malago' mamatinas mensåhe pot i mapropone siha na regulasion siña ha'muna hålom tinige' guatto gi Kumision Botasion i Commonwealth, PO Box 500470, Saipan, MP 96950-0470. I man matugi' siha na sinenti siña lokkue ma chule' guatto gi Ofisinan i Kumision Botasion i Commonwealth osino <u>fax</u> guatto gi (670) 664-8689. Todu i sinenti debi di hu ma tugi' ya hu fan marisibe' gi hålom trenta (30) dias despues di i fecha anai ma pupblika este na notisia gi Rehistran i Commonwealth.

I Kumision Botasion i Commonwealth ha adopta este siha na amendasion para i regulasion, gi Febreru 11, 2005.

Ma Setifika as

MIGUEL M. SABLAN

Kabiseyo

Kumision Botasion i Commonwealth

2-11-05

Fecha

Pinelo' as:

BERNADITA B. DELA CRUZ

Rehistran i Commonwealth

2-15-05

Fecha

#### ARONGORONGOL TOULAP

# POMWOL LLIWEL KKAAL NGÁLI ALLÉGHÚL MWISCHIIL FFIL MELLÓL COMMONWEALTH

Sángi bwááng iye re mweiti ngáli Mwiischil ffil mellól <u>Commonwealth</u> bwelle 6105 Alléghúl Toulap 12-18, iye aa ssiweló, igha ebwe akkaté allégh kkaal reel lemelemil ffil mellól <u>Commonwealth</u>, Mwiischil ffil mellól <u>Commonwealth</u>, Mwóghútúl faal assamwool, me sángi yaal kke pomwoli lliwel kkaal ngáli allégh kkaal igha re ssóbw yááyá lo ink reel <u>commonwealth</u> <u>election</u> bwe e ffat yóómw bwoota.

Pomwol lliwel kkaal ngáli allégh kkaal nge emmwel óubwe amweri fischiy mereel, me bwughil kkopial mereel, Mwiischil ffil mellól <u>Commonwealth</u>, mereel bwulasiyo ye 1313 Anatahan Drive, Capitol Hill, Seipél. Pomwol lliwel kkaal ngáli allégh kkaal ebwal akkatééló llól <u>Commonwealth</u> Register. Mwiischil ffil mellól <u>Commonwealth</u> nge e ekke tittingór aghiyegh mereer aramas toulap bwelle pomwol ssiwel kkaal ngáli allégh kka eyoor ighila.

Schookka eyoor mangemangiir reel pomwol lliwel kkaal ngali allegh kkaal nge emmwel rebwe ischilong reel Mwiischil ffil mellel Commonwealth, P.O. Box 500470, Seipel, MP, 96950-0470. Ischil aghiyegh yeel nge emmwel ebwe akkafangele reel Bwulasiyool Mwiischil ffil mellel Commonwealth me ngare fax reel (670) 664-8689. Alongal mangemang nge rebwe ischiy me rebwe bwughil llel eliigh (30) raalil sangi rallil yaal amataf yeel akkateele mellel Commonwealth Register.

Mááischigh 11, 2005	Market State of the State of th	
Alughulugh sángi:		<u>Z-11-05</u> Rái
Aisis sangi:	MIGUEL M. SABLAN Assamwool Mwiischil ffil mellol Commonwealth	
Aisis saugi.	Bernadita B. Dela Cruz Commonwealth Registrar	2-15-05 Rái
Mwir sangi:	Thomas A. Tebuteb Sow Alillisil Sow Lemelem	RAI
Sangi allegh ye 1 CMC raa takkal amweri fischi	talil 2153, iye aa lliweld sangi Alleghul Toulap 1 iy me alegheld mereel CNMI Sow Bwungul	0-50, allegh kkaal nge Allegh Lapalap.
. ;	Sów Bwungúl Allégh Lapalap	Rál

# PROPOSED AMENDMENTS TO SECTION 5.12OF THE REGULATIONS OF THE COMMONWEALTH ELECTION COMMISSION

Section 5.12of the Commonwealth Election Commission's Regulations published in the Commonwealth Register Volume 23, Number 3, on March 22, 2001, page 17736, is hereby amended to read as follows:

5.12 <u>Proof of Voting</u>. The polling place <u>supervisorsworkers</u> shall cross off the name of each voter on their list after that voter has received their ballot. In addition each voter shall be required to have their right index finger marked with an ink capable of making an indelible mark to show that the voter has indeed already voted. If a voter does not have a right index finger then any other finger will be acceptable.



## NORTHERN MARIANAS COLLEGE BOARD OF REGENTS

P.O. BOX 501250, Saipan, MP 96950 Tel: (670) 234-5498 Fax: (670) 234-1270

#### **PUBLIC NOTICE**

## PROPOSED POSTSECONDARY EDUCATION LICENSING POLICY OF THE NORTHERN MARIANAS COLLEGE BOARD OF REGENTS

The Board of Regents of the Northern Marianas College, Commonwealth of the Northern Mariana Islands, pursuant to its duties and responsibilities under Public Law 4-34, hereby gives public notice of its intention to promulgate these proposed Postsecondary Education Licensing Policy.

Any interested person may examine the proposed Postsecondary Education Licensing Policy and submit written comments, positions, or statements for or against the proposed policy to the President of the Northern Marianas College, at P. O. Box 501250, Saipan, MP 96950, Office of the President, As Terlaje Campus, Saipan, Commonwealth of the Northern Mariana Islands 96950, no later than thirty (30) calendar days following the date of the publication of the Notice in the Commonwealth Register.

Dated this \_\_\_\_\_ day of December, 2004 at Saipan, Northern Mariana Islands.

Kimberlyn K. King-Hinds Chairperson, Board of Regents Northern Marianas College

Pursuant to 1 CMC § 2153, as amended by PL 10-50, the proposed Postsecondary Education Licensing Policy of the Northern Marianas College Board of Regents, a copy of which is attached hereto, has been reviewed for legal sufficiency and approved by the Office of Attorney General, Commonwealth of the Northern Mariana Islands.

Pamela Brown

Attorney General

Received by:

Thomas A. Tebuteb

Special Assistant for Administration

Date

Bernadita B. Dela Cruz

Commonwealth Registrar



## NORTHERN MARIANAS COLLEGE **BOARD OF REGENTS**

P.O. BOX 501250, Saipan, MP 96950 Tel: (670) 234-5498 Fax: (670) 234-1270

### **NOTISIAN PUPBLIKU**

### MA PROPOPONE I ARKELAMENTON LISENSIA POT EDUKASION POSTSECONDARY GI KOLEHUN NOTTE MARIÅNAS KUETPON I REGENTS

I Kuetpon Regents I Kolehun Notte Marianas ginen I Commonwealth I Sankattan Siha Na Islas Marianas, sigun I responsibilidat yan checho-ña gi papa' i Lai Pupbliku 4-34, ha publika I intension para hu establesi I man mapropone na Areklamenton Lisensia Pot Edukasion Postseondary.

I man enteresao na petsona siha, siña ma eksamina i ma propopone na Areklamento Lisensia Pot Edukasion Postseoncdary ya hu fan nahalom tinige'opinion, i pusisión pat mensahe kao ha aksepta pat ha kokontra i man mapropone na areklamento. Sina masatmiti este na tinige' guatto

	gi Presidente, gi As Terlaje Campus, giya Saipan, gi Sankattan Siha Na Islas Marianas 97950, gi halom trenta (30) diha desde i fechan i publikasion este na Notisia gi Rehistran i Commonwealth.
	Mafecha este gi mina na ha'ane gi Disiembre, 2004 gi ya Saipan, I Sankattan Siha Na
•	Islas Marianas.
	Kithberlyn Ring Hinds
	Kabesiya, Kuetpon i Regents
	Kolehun Notte Marianas
	Sigun i Lai 1 CMC §2153 ni ma'amenda genin i Lai Pupbliku 10-50, i man mapropone na Areklamenton Lisensia Pot i Edukasion Postsecondary gi Kulehon Notte Marianas Kuetpon i Regents I, i kopia ni man chechetun guine esta man maribisa para hu ligat sufisiente yan ma'aprueba ni Ofisinan i Abugadon Henerat gi Commonwealth I Sanketton Sika Na Islan Mariana.
	Heneråt, gi Commonwealth I Sankattan Siha Na Islas Mariånas.
	Ticherat, gi Commonweatur i Sankattan Sina Na Islas Marianas.
	Pamela Brown Fecha
	Pamela Brown Abugådon Heneråt Marisibe'las:  Warisibe'las:  All Abugådon Heneråt  Abugådon Heneråt  All Abugåd
•	Pamela Brown Abugådon Heneråt



# NORTHERN MARIANAS COLLEGE BOARD OF REGENTS

P.O. BOX 501250, Saipan, MP 96950 Tel: (670) 234-5498 Fax: (670) 234-1270

## ARONGORONGOL TOULAP

# POMWOL POSTSECONDARY EDUCATION LICENSING POLICY MELLÓL NORTHERN MARIANAS MWIISCHIL COLLEGE REGENTS

Mwiischil Regents mellól Northern Marianas College, Commonwealth Téél fakywasch Marianas, sángi yaal lemelem llól Alléghúl Toulap 4-34 iye ee arongaar toulap igha ebwe atééw pomwol Postsecondary Education Licensing Policy.

Schookka eyoor mangemangiir nge emmwel rebwe amweri ghatchuw pomwol Postsecondary Education Policy me atotoolong ischil me ngare aingiingil ngali President mellol Northern Marianas College, reel Terlaje Campus, P.O. Box 501250, Seipel, MP 96950, bwulasiyool President, As Terlaje Campus, Seipel, Commonwealth Téél Falúwasch Marianas 96950, essóbw luuló eliigh (30) rállil sangi yaal arongow mellól Commonwealth Register.

Rállil ye \_\_\_\_\_ llól Tumwur (December), 2004 me Seipél, Téél Falúwasch Marianas

Kimberlyn K. King-Hinds Samwoolul, Board of Regents Northern Marianas College

Sángi outol 1 CMC §2153 iye aa liwel mereel Alleghúl Toulap 10-50, me pomwol Postsecondary Education Licensing Policy mellol Board of Regents Northern Marianas College, tilighial ye ee appasch, nge raa takkal amweri fischiy me alúghúlúghúlo mereel Bwulasiyool Sów Bwungúl Allégh, Lapalap, Commonwealth Téél Falúwasch Marianas.

Pamela Brown Sów Bwungúl Allégh Lapalap	Rál
Mwir sángi.	$\bigcap$

Thomas A. Tebuteb Ral Bernadita B. Dela Cruz
Sów Alillisil Sów Lemelem Commonwealth Registr

Commonwealth Registrar

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## LICENSING OF POSTSECONDARY EDUCATIONAL INSTITUTIONS TO OPERATE IN THE **CNMI**

#### **001 Constitutional and Statutory Authority**

The CNMI Constitution, Article XV, Section 2(a) establishes that the Board of Regents "shall formulate policy relating to the higher education needs of the Commonwealth of the Northern Mariana Islands" (CNMI).

3 CMC § 1316(k) authorizes the Board of Regents "to serve as the official coordination agency of the Commonwealth for all postsecondary education within the Commonwealth, with power to license, limit, and otherwise regulate any postsecondary educational activities offered by any public or private agency".

Therefore, in accordance with its constitutional and statutory mandates, the Board of Regents sets forth the following policies, regulations, and procedures regarding the licensing of postsecondary educational institutions to operate in the CNMI.

#### 002 Definitions

COMMONWEALTH REGISTER

- (A) "Board" shall mean the Board of Regents (BOR), which is the official coordinating agency for all postsecondary educational activities in the Commonwealth of the Northern Mariana Islands.
- (B) "License" shall mean the granting of permission, by the Board of Regents, for a postsecondary educational institution to operate in the CNMI for a period to be determined by the BOR.
- (C) "Provisional License" shall mean the initial granting of permission, by the Board of Regents, for a postsecondary educational institution to operate in the CNMI for a period of one year, during which time outstanding requirements for obtaining a license must be met:
  - (i) provided that if the applicant states it will begin registering and providing classes for students, the applicant be in all respects qualified, capable, and have all necessary personnel, facilities, support staff, and other resources to provide the quality of academic and other services stated in the catalog and curriculum, and be so certified by the BOR; and,

- (ii) provided that no tuition, room and board, registration, or other fees and costs be collected from any student until the applicant meets (c)(i). The applicant may conduct public awareness activities and recruitment activities subject to (c)(ii).
- (D) "Postsecondary institution" shall mean a public or nonpublic (not-for- profit or for-profit) postsecondary educational institution offering courses or programs beyond high school leading to a certificate or a degree. This includes, but is not limited to, vocational organizations e.g. "Saipan Institute of Jet Engine Maintenance". This may also include, but is not limited to, institutions, which use terms such as "School" in their title e.g. "Saipan Business School".
- (E) "College" shall mean an institution of higher education offering instruction and granting degrees, a bachelor's degree after a four-year course of study, or an associate degree after a two-year course of study, in any of several specialized courses in some academic area, profession, or occupation.
- (F) "University" shall mean a postsecondary educational institution with one or more undergraduate college, together with a program of graduate studies and a number of professional schools, and authorized to confer various degrees, as the bachelor's, master's, and doctor's.
- (G) "Out-of-state institution" shall mean any college, university, community college, technical institute, or the equivalent that awards an associate or higher degree and is controlled by a public or private body organized outside the CNMI.
- (H) "Distance education" shall mean that there is physical separation of the instructor and student. The means of communication can be in many forms including, but not limited to, paper correspondence, video, audio, teleconference, Internet or any combination thereof.
- (I) "Catalog" shall mean a published accurate document which includes but is not limited to, the Mission and Philosophy statements of the applicant institution; a detailed list with appropriate description of each degree, certificate, or certification offered along with details of each course to be taught; a description of the institution facilities and services, academic support services; details of application processes and costs for services to be provided; a list of teaching faculty with appropriate titles and qualifications information, and a list of administrative and other support personnel with their titles and qualifications;

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how students are to be graded; and other information commonly found in a U.S. postsecondary institution.

- (J) "Course" shall mean a college-level course offered for credit with specific curriculum, educational objectives, course requirements; and; the appropriate accompanying academic, faculty, and other educational support services.
- (K) "Certificate or degree program" shall mean a sequence or combination of courses which, upon satisfactory completion thereof, leads to the award of an educational certificate, diploma, or degree.
- (L) "Physical presence in the Northern Mariana Islands" shall be evidenced by securing all legal permits and documents required for operating in the CNMI and showing proof of arrangements for use of physical facilities which will house the institution, including its educational activities.

## 003 Required License

A license is required for any postsecondary education provider, except as provided for under 004,

- (A) offers or conducts one or more courses or certificate/degree programs; or
- (B) offers or conducts training toward a vocational end; or
- (C) offers an educational credential, and whose required length of study is one semester or more.

A license is also required for any out-of-state institution (including any distance education provider) that has a physical presence in the Northern Mariana Islands, except as provided for under 004(e).

#### 004 Exclusions

The license requirements laid out herein shall not apply to:

(A) offering of a short course or seminar in which instruction for the segment takes no more than twenty classroom hours;

- (B) offering of courses or programs on a military installation solely for military personnel or civilians employed on such installation;
- (C) training that is exclusively for self-improvement or personal enrichment and is non-vocational and noncredit bearing;
- (D) training that is offered free to certain select groups of students, such as closed enrollment classes for a company's employees and arranged through private contracts; or
- (E) offering, by an accredited out-of-state institution, of one or more courses or programs in partnership with a college in the CNMI that has been licensed by the Board of Regents.

#### 005 Declaration of Intent

Any institution of higher education planning to offer any credit-bearing course or degree program in the Northern Mariana Islands, except as provided for under Section **004**, shall inform the Board of Regents of such intent by letter. This declaration of intent shall at the minimum include the following:

- (A) proposed name of the institution planning to deliver such educational offerings;
- (B) brief description of the scope of the institution's proposed educational offerings; date the institution plans to begin instruction;
- (C) names, telephone numbers, and addresses of principal contact persons/organizations for use by the Board for communication purposes during the application phase;
- (D) date the institution expects to submit its application with accompanying required documentation;
- (E) a certified financial statement of the planned institution, and,
- (F) a detailed description of the proposed facilities in which academic, administrative, housing, and other student and institution services will take place, including a detailed description of the proposed library.

#### **006 License Application**

Prior to offering any credit-bearing course or degree program at the postsecondary level in the Northern Mariana Islands, except as provided for under Section 004, the institution shall apply to the Board of Regents for, and receive, a license to operate in the CNMI.

006.01 Application Process. The application materials may be obtained from the Office of the Board of Regents on Saipan.

The application/licensing process includes:

- (A) submitting the application to the Office of the Board according to established deadlines,
- (B) securing required official documents, certifications and bond(s),
- (C) paying all applicable fees, and
- (D) meeting all requirements laid out in Sections 005 and 007.

All applications are reviewed in a three-tier process, first by Board staff, second by a Committee designated by the Board, and finally by the Board of Regents. Final approval of the application by the Board is required BEFORE the applicant may begin:

- (A) officially registering students into the proposed institution;
- (B) collecting any costs or fees related to attendance from any students who have been preliminarily registered;
- (C) collecting or causing to be collected of any recruitment or related fees from students from applicant officials or their agents either directly or indirectly;
- (D) bringing students from outside the CNMI into the CNMI; and,
- (E) conducting marketing or recruitment activities in or outside of the Commonwealth of the Northern Mariana Islands (CNMI).

The application must be submitted according to established deadlines to be considered at one of the Board's quarterly meetings. Applicants may contact the Office of the Board to obtain a current list of filing deadlines.

The Program Committee of the Board will not commence its review of the application until the applicant submits all required documentation to the Office of the Board, as certified by the Board or their designee. Such certification shall be not later than two months prior to a regularly scheduled Board meeting in January, April, July, or October.

Should such deadline not be met, the application review will not commence; and, the applicant may not begin operations including but not limited to, official registration of students, collection of costs and fees from potential students, or bringing potential students into the CNMI, until prior to the next quarterly meeting and shall be in accordance with the schedule laid out in the License Application Process and Timeline.

The Board shall make a determination regarding the application at its quarterly meeting applicable for the date of submission of the application.

Approval by the Board of an application and/or any decision to issue a license shall not be construed as a grant of authority to enroll foreign students without accompanying approval of the institution by the Division of Immigration under Immigration Regulation §706 (H).

#### 006.02 Application Fee

A nonrefundable application fee to cover administrative costs shall be submitted to the Board with each application. Resubmission of the application following its withdrawal by an applicant requires an additional application fee. Refer to Section **014** of these policies.

The nonrefundable fees are established as follows:

- (A) \$10,000 for credit bearing course offerings of degree programs or the like (refer to Section **002** Definitions);
- (B) \$5,000 for programs of 40 hours or more, but less than degree requirements, of Training courses and/or Certification of Completion programs or the like; and,

(C) \$2,500 for programs of 20 hours or more but less than 40 hours of Training courses or Certification of Completion programs or the like.

#### 006.02.01 Exclusion.

In the event that the Board denies the applicant a license, the Board may, at the time of the denial, determine that the application fee may be waived for resubmission of an application, in whole or in part, provided that the resubmission occurs within three months of the date of denial.

## 007 License Requirements

In order to obtain a license to operate as a postsecondary educational institution in the CNMI, an entity must meet the following requirements:

- (A) Appropriate and adequate physical institutional facilities in the CNMI necessary to carry out their stated Mission, programs and services;
- (B) Defined mission, suitable purposes, and identified target population;
- (C) Institutional governing capacity;
- (D) Financial stability and integrity;
- (E) Educational programs of acceptable quality, content, and length;
- (F) Quality teaching faculty;
- (G) Sufficient library, learning, and other educational resources;
- (H) Adequate support services and resources; and,
- (I) Adequate administrative services and resources.

All of these criteria and others in these Sections including but not limited to 002 Definitions including 002(i), must be detailed in a printed catalog provided to the Board of Regents with the application, provided to each potential student prior to registration, and available to the public.

## 007.01 Physical Presence in the CNMI

- (A) Evaluation criteria:
  - (i) The institution has the required legal documents to operate in the CNMI;
  - (ii) The institution has sufficient and adequate facilities to serve its educational purposes.
- (B) Required documentation and verification:
  - 1. Sole Proprietorship:
    - (i) CNMI Business License
    - ii) CNMI Taxpayer ID Number and tax clearance certification from the CNMI Department of Revenue and Taxation;
    - (iii) Identification and description of physical facilities to be used by the institution, with designation of principal use of each facility or portion of facility (e.g., administrative, instructional, library);
    - (iv) Copies of the deed, lease, and/or rental agreements, the length of which shall be for a minimum of three years, for all property, buildings and other facilities to be used by the applicant to provide academic and support services described in the Letter of Intent, Application, and Catalog;
    - (v) Once licensed the licensee must notify the BOR when there is a material change in a rental, lease, or other agreement which affects the buildings, facilities, or contractual support for the institution within 5 working days of such change to include but not be limited to e.g. a rental or lease agreement being terminated for whatever reason (refer to Sections 016 and 017);
    - (vi) Any change which in the opinion of the BOR or its designee affects adversely the ability of the licensee to provide educational and/or support services required under the license shall be required to be rectified, to the satisfaction of the BOR within 5 working days of the adverse situation. Failure to do so may result in suspension of the license by the BOR (refer to Sections 016 and 017);

- (vii) A site visit by the Program Committee or their designee to compare what is described in the applicant submission documents for licensure, with actual physical and related institution facilities; and,
- (viii) A prescreening background check shall be conducted of applicants to include but not be limited to criminal record, credit report, and reference reviews and checks.

#### 2. Partnership:

- (i) CNMI Business License;
- (ii) CNMI Taxpayer ID Number and tax clearance certification from the CNMI Department of Revenue and Taxation;
- (iii) Partnership Agreement;
- (iv) Identification and description of physical facilities to be used by the institution, with designation of principal use of each facility or portion of facility (e.g., administrative, instructional, library);
- (v) Copies of the deed, lease, and/or rental agreements, the length of which shall be for a minimum of three years, for all property, buildings and other facilities to be used by the applicant to provide academic and support services described in the Letter of Intent, Application, and Catalog;
- (vi) Once licensed the licensee must notify the BOR when there is a material change in a rental, lease, or other agreement which affects the buildings, facilities, or contractual support for the institution within 5 working days of such change to include but not be limited to e.g. a rental or lease agreement being terminated for whatever reason;
- (vii) Any change which in the opinion of the BOR or its designee affects adversely the ability of the licensee to provide educational and/or support services required under the license shall be required to be rectified, to the satisfaction of the BOR within 5 working days of the adverse situation.

Failure to do so may result in suspension of the license by the BOR (refer to Sections **016** and **017**);

- (viii) A site visit by the Program Committee or their designee will compare what is described in the applicant submission documents for licensure, with actual physical and related institution facilities; and,
- (ix) A prescreening background check shall be conducted of applicants to include but not be limited to criminal record, credit report, and reference reviews and checks.

## 3. Corporation:

- (i) CNMI Business License;
- (ii) CNMI Incorporation documents certified by the Registrar of Corporations if incorporated in the CNMI;
- (iii) CNMI certificate of authority from the Registrar of Corporations if a foreign corporation;
- (iv) Corporate Articles and By-laws;
- (v) CNMI Taxpayer ID Number and tax clearance certification from the CNMI Department of Revenue and Taxation;
- (vi) Identification and description of physical facilities to be used by the institution, with designation of principal use of each facility or portion of facility (e.g. administrative, instructional, library);
- (vii) Copies of the deed, lease, and/or rental agreements, the length of which shall be for a minimum of three years, for all property, buildings and other facilities to be used by the applicant to provide academic and support services described in the Letter of Intent, Application, and Catalog;
- (viii) Once licensed the licensee must notify the BOR when there is a material change in a rental, lease, or other agreement which affects the buildings, facilities, or contractual support for the institution within 5 working days of such

change to include but not be limited to e.g. a rental or lease agreement being terminated for whatever reason:

- (ix) Any change which in the opinion of the BOR or its designee affects adversely the ability of the licensee to provide educational and/or support services required under the license shall be required to be rectified, to the satisfaction of the BOR within 5 working days of the adverse situation. Failure to do so may result in suspension of the license by the BOR (refer to Sections 016 and 017);
- (x) A site visit by the Program Committee or their designee to compare what is described in the applicant submission documents for licensure, with actual physical and related institution facilities; and,
- (xi) A prescreening background check shall be conducted of applicants to include but not be limited to criminal record, credit report, and reference reviews and checks, including background checks of the stockholders, directors, and officers of the corporation.

#### 007.01.001 Ancillary agreements and contracts

In the case of 1, 2, or 3, above the applicant, prior to registering students, must have signed contracts, which must include but is not limited to educational facilities, faculty, student, and other support services which must include but is not limited to: (a) Facilities and maintenance and cleaning of dorms; (b) Utilities and communication services including phone and Internet; and (c) administrative staff.

## 007.02 Defined Mission, Suitable Purposes, and Identified Target Population

- (A) Evaluation criteria:
  - (i) The institution has a clearly defined mission appropriate for a postsecondary educational institution and for its intended constituency;
  - (ii) The institution's purposes are suitable to the public interest of the CNMI; and,
  - (iii) The institution's target population is identified.
- (B) Required documentation:
  - (i) Statement of mission for the institution;

- (ii) List of purposes for the institution; and
- (iii) Description of the population to be served by the institution.

## 007.03 Institutional Governing Capacity

- (A) Evaluation criteria:
  - (i) The institution has a governing board whose responsibilities are clearly stated;
  - (ii) Among the governing board's responsibilities are those that ensure institutional integrity and that the institution is engaged in activities designed to carry out its stated mission and purposes;
  - (iii) The governing board is sufficient in size and composition to meet its stated responsibilities;
  - (iv) The institution has a Chief Executive Officer with defined responsibilities and sufficient qualifications to meet those responsibilities;
  - (v) The institution has an organizational structure sufficient to manage its affairs.

#### (B) Required documentation:

- (i) Governing Board articles and by-laws (for a corporation) and statement of board responsibilities;
- (ii) Biographical information for members of the governing board of educational institution and business owners, which shall include academic achievements and previous experience appropriate for a Board member, and also including the primary home address of each Board member and country of residence; in the case where a Board member's domicile or primary residence is not in the CNMI, a statement as to how the Board member(s) will effectively meet their governing, oversight, and guidance responsibilities; and,
- (iii) Biographical information and responsibility of the Chief Executive Officer of the institution, including academic achievement and educational experience, as well as documentation of domicile in the CNMI:
  - (a) In the case where degrees are awarded by a non U.S. postsecondary institution(s) of higher education documentation must be provided as to the degree awarding credentials and authority of the non U.S. institution; and,

(b) Table of organization, including names and biographical information of those who will fill the positions.

## 007.04 Financial Stability and Integrity

#### (A) Evaluation criteria:

- (i) The institution's proposed budgets, financial resources, and funding base are adequate to support its mission, purposes, and programs; and,
- (ii) The institution ensures its financial integrity by making provision for timely and regular external fiscal audits of (a) its financial records, and (b) its financial management system.

#### (B) Required documentation:

- (i) A thorough Business Plan which covers all aspects of the institution and its operations, which might use as its outline the sections of this application, especially parts 007 - 007.90;
- (ii) A Financial Statement of the entity under which this application is submitted, compiled and signed by a U.S. Certified Public Accountant;
- (iii) Proposed line item budgets for the first three years of operation, which provide details of anticipated revenues and expenditures;
- (iv) Documentation of any external foundation or other financial support, reviewed by the CPA in the Financial Statement;
- (v) Documentation of funding base, reviewed by the CPA in the Financial Statement;
- (vi) Description of plans for timely and regular annual fiscal audits of the institution's financial records and financial management system to be conducted by a U.S. Certified Public Accountant (CPA);
- (vii) Copies of corporate/institution bank statements from an FDIC bank doing business within the CNMI;

- (viii) Proof of performance/surety bond from a company or corporation legally established to provide such services in the CNMI, in an amount equal to 25% of the total tuition and fees, including room and board charges, and return plane fare for all students officially registered by the institution. See **Section 015** of this Policy:
  - (a) In lieu of a surety bond, an amount in cash equal to the 25% requirement placed in a Trust Account with an FDIC bank located in the CNMI, the principle of which cannot be withdrawn without 30 days prior notice to the BOR;
  - (b) A combination of a performance/surety bond and cash placed in a Trust Account with an FDIC bank located in the CNMI shall be equal to 25% of the total tuition and fees, and other charges as provided by Section **007.04 (B) (viii)**;
  - (c) When a performance/surety bond is canceled for any reason whatsoever, the licensee must notify the BOR within five working days of such cancellation or termination; the licensee shall then have 10 working days to either obtain a replacement performance/surety bond from a company authorized to provide such an instrument in the CNMI or establish a cash Trust Account or a combination;
  - (d) Failure to meet these requirements are grounds for suspension of the license or other action by the BOR, including revocation of the license.
- (ix) A written guarantee that the applicant institution shall NOT collect tuition and fees from students while OUTSIDE of the CNMI, but only collect applicable tuition and other fees outlined in the institution catalog from students physically within the CNMI.

The institution may require a Promissory Note be signed by the student when registered outside of the CNMI but only after, and so long as, the institution license granted by the BOR is legally in force;

- (x) A written guarantee that all of the tuition and other fees collected from registered students be deposited in an FDIC bank within the CNMI; and,
- (xi) The BOR will monitor compliance through the annual audit requirement, and review of bank statements required under this application and the license requirements.

## 007.05 Educational Programs of Acceptable Quality, Content, and Length

## (A) Evaluation criteria:

- (i) The institution has policies that specify the requirements and qualifications for students entering (a) the institution and (b) its certificate and degree programs;
- (ii) The institution's catalog clearly describes its certificate and degree programs, including expected student learning outcomes, and specifies the requirements to be met for the award of each certificate and degree offered, including general education courses and academic standards which shall include but not be limited to class attendance, behavior, due process and grading standards policies;
- (iii) The institution's instructional program offerings are (a) consistent with its mission and (b) are of sufficient depth, breadth, and rigor to provide the knowledge and skills expected of program graduates and to merit award of the proposed certificate or degree;
- (iv) The institution's degree programs include a defined education component of the breadth and depth appropriate for a postsecondary degree;
- (v) The institution's catalog contains course descriptions and prerequisites, when appropriate, for all offered courses;
- (vi) The institution has stated criteria for awarding academic credits;
- (vii) Generally accepted standards for hours of instruction per academic credit awarded are manifested in the institution's proposed class schedule;
- (viii) The proposed class schedule identifies, for each class, hours of classroom/ laboratory instruction, and credits to be awarded;
- (ix) If course or program offerings are affiliated with a U.S. accredited institution, the quality of such offerings is adequate to meet the needs of the courses or programs offered in the CNMI;
- (x) Appropriate and accurate student and staff recruitment information, public awareness materials including written advertisements; and,

- (xi) A procedure to survey students to determine their evaluation of the quality of instruction, facilities, and institutional activities.
- (B) Required documentation and verification:
  - (i) Statement of requirements for student admission into the institution;
  - (ii) Statement of requirements for student admission into a specific program of study;
  - (iii) Names of certificates and degrees, with expected student learning outcomes for each:
  - (iv) Specific requirements for each certificate and degree offered (e.g. required courses, including general education requirements, and academic standards);
  - (v) Catalog or other similar public document describing the courses and established prerequisites for specific courses;
  - (vi) A Student Handbook or other similar document detailing student rights, due process, institution policies which affect students, expected behavior, disciplinary and student grievance procedures and other policies commonly found in student handbooks;
  - (vii) A copy of the curriculum for each course to be taught listed in the catalog, or schedule of courses to be taught each semester (or quarter) must be provided to the BOR prior to the course being taught, this shall include but not be limited to goals, objectives, content, activities, teaching methods, materials, and other support services needed e.g. library and reference, research facilities, laboratory or other appropriate hands-on items;
  - (viii) Statement of criteria for awarding of credits;
  - (ix) A schedule of classes for the first semester of operation;
  - (x) Appropriate academic, vocational and/or other facilities, which may include but not limited to housing, library, are fully equipped with appropriate collateral equipment, including but not limited to books, supplies, and materials;

- (xi) A site visit by the Program Committee or their designee to the institution facilities, including library, housing, or other support facilities identified by the applicant to determine that these facilities are ready for occupancy and use in all respects as described and required in the application, the license, and the catalog; and, in compliance with all applicable local and Federal health, safety, and other requirements set forth in CNMI and Federal regulations;
- (xii) Copies of all public recruitment materials, ads, pamphlets, information about the institution provided to students and personnel which describe the institution facilities, courses of study, costs and fees and other related information;
- (xiii) A copy of the Student Survey designed to evaluate institutional instruction, facilities, and support services, and copies of student survey results at the end of each academic year; and,
- (xiv) A copy of all documents which students are required to sign, including but not limited to, applications, promissory notes, student awareness of rules and regulations documents, promises by the institution and/or student; and a detailed schedule of all institutional charges, tuition and fees, and deposit requirements; a statement of a schedule of refunds of all institutional charges, tuition and fees, and deposits in accordance with the institutions refund policy; and, a statement of the institution's financial aid policy including but not limited to financial aid available to students and associated conditions.

## 007.06 Quality Teaching Faculty

- (A) Evaluation criteria:
  - (i) The institution's teaching faculty is sufficient in number and qualifications to support the institution's educational programs;
  - (ii) The institution's teaching faculty are qualified to teach those courses which they are assigned to teach;
  - (iii) The appropriate number of qualified teaching faculty or instructors and support services professionals, such as but not limited to librarian and counselor, have been hired, through contracts which must be provided to the BOR, prior to collection of student tuition and fees for each semester:

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- (iv) The institution has a clear statement of faculty responsibilities; and,
- (v) Faculty evaluation of the institution.

#### (B) Required documentation:

- (i) Roster of full time and part time faculty, including degrees, qualifications, and experience;
- (ii) In the case where degrees are awarded by a non U.S. postsecondary institution(s) of higher education or U.S. institutions not accredited by a nationally recognized accrediting authority, documentation must be provided as to the degree awarding credentials and authority of the non U.S. and/or non accredited institution;
- (iii) A copy of the contract for each faculty and student support services personnel e.g., librarian, technical instructor, counselor must be made available for review by the BOR or their designee;
- (iv) Statement of faculty responsibilities;
- (v) Schedule of classes, which identifies the faculty responsible for each class;
- (vi) A Personnel Policies Handbook, or similar document shall be provided to the BOR or its designee, which clearly states policies with respect to hiring, due process, grievance procedures, disciplinary procedures and other issues commonly found in personnel policies; and,
- (vii) A copy of a Faculty Evaluation Survey in which faculty and support services personnel are asked to evaluate institutional policies, academic and instruction programs, student services, facilities and related issues, and a copy of the survey results at the end of each academic year.

## 007.07 Sufficient Library and Learning Resources

- (A) Evaluation criteria:
  - (i) The institution's library and learning resources are sufficient in breadth, depth, and quantity to support the courses and instructional programs offered at the institution and to meet the needs of students enrolled in such courses and/or programs;

(ii) The institution shall have the capacity to provide professionally trained and competent library, research, and/or reference personnel to serve the needs of the students as stated in the Mission and in their program and curriculum descriptions

#### (B) Required documentation and verification:

- (i) Description and quantity of library holdings and learning resources including but not limited to, number and titles of books by category, periodicals, reference books, instruction technology equipment including multimedia equipment e.g. computers, power point, microfilm;
- (ii) Copies of agreements for access to external learning resources including but not limited to appropriate library, reference, and research resources;
- (iii) A plan to expand, update and improve library holdings and support services; and,
- (iv) A site visit by the Program Committee or its designee to determine if the materials, equipment and supplies identified as being available to support student academic, vocations, and/or professional instruction, and faculty and student reference, research, and resource needs are in place and operation prior to the beginning of registering students, collection of student tuition and fees, and the beginning of course/class instruction.

## **007.08 Adequate Student Support Services**

#### (A) Evaluation criteria:

- (i) Support services for students are adequate and appropriate for meeting the needs of students and are consistent with student characteristics and the institution's mission; and,
- (ii) The institution has a clear description of (a) how it will maintain student records and (b) how students may obtain academic records if the institution closes.

#### (B) Required documentation and verification:

- (i) Title and job description of non-instructional personnel whose responsibilities are to provide student support;
- (ii) Description of how student records will be maintained;

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- (iii) Description of how students may obtain academic records if the institution closes; and,
- (iv) A site visit to by the Program Committee or its designee to review and evaluate the student support services identified by the institution in its application and supporting documents.

## **007.09 Adequate Administrative Services**

## (A) Evaluation criteria:

(i) The institution has sufficient staff with appropriate qualifications and experience to provide the administrative services necessary to support the institution's mission and educational programs.

## (B) Required documentation:

- (i) Title and job description of administrative personnel; and,
- (ii) Names and biographical information of administrative staff, proposed (and so identified) current or proposed (and so identified).

#### 008 Need for Additional Information

It is in the applicant's best interest to provide as much relevant information as possible to enable the Board of Regents to make a decision regarding the applicant's eligibility to establish and operate an institution of higher education within the CNMI.

The Board of Regents reserves the right to ask the applicant for any additional information it deems necessary for it to make a determination in authorizing the applicant to operate as a postsecondary educational institution in the CNMI.

#### 009 Notification of Decision

The Board's staff shall issue notification of the Board's decision regarding the applicant's application by telephone within two working days following the Board's decision regarding the application.

The license authorizing the applicant to operate a postsecondary educational institution within the CNMI will be sent to the applicant by registered mail within five working days following the Board's decision.

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In the event that an applicant is denied a license, a letter stating the reasons for such denial shall be sent to the applicant by registered mail within ten working days following the Board's decision.

## 010 Reconsideration

Should its application be denied by the Board, an applicant has the right to file for reconsideration when:

- (A) such applicant can show that the Board's staff or others
  - (i) have misrepresented its application in whole or in part;
  - (ii) acted in excess of the prescribed requirements; or
  - (iii) did not observe procedures prescribed herein;
- (B) and such applicant can show that it complied with all of the requirements prescribed herein.

#### 010.01 Procedure.

- (A) A request for reconsideration must be made to the Chairperson of the Board no later than 20 days after the applicant's receipt of the letter from the Board stating the reasons for the denial of a license.
- (B) The Chairperson shall appoint a special committee of not less than three Board members to review such request.
- (C) The committee shall consider the request and make recommendations to the Board.
- (D) The Board shall make a decision regarding the request for reconsideration no later than 20 days after the Chairperson of the Board has received the committee's recommendation, and the applicant shall be informed about the decision by registered mail within ten working days following the decision.
- (E) Should the Board grant the request for reconsideration, the applicant shall have 20 days to submit its written argument on why the license should be granted.
- (F) The Board shall make its final decision within 20 days of applicant's written submission.

#### 010.02 Institution Operations Prior to License Approval.

Under NO circumstances may the applicant market, recruit, register, collect fees and tuition or other costs from prospective students prior to receiving notice of the approval of the

license application, AND until all conditions contained in the license approval are met and approved in writing by the BOR.

#### **011 Provisional License**

The Board of Regents recognizes that when an entity applies for a license to establish a postsecondary educational institution in the CNMI or for a license to establish an extension of an out-of-state institution of higher education in the CNMI, some requirements may not be fully met at the time of the application. Therefore, the Board, at its sole discretion, may grant a Provisional License for a period to be determined by the BOR so that such remaining requirements may be met.

- (A) A statement from the Board shall accompany the Provisional License and shall specify those requirements, which have not been met, along with a timeline for meeting the requirements. Documentation showing how the institution has subsequently met such requirements, and a non-fundable fee of \$1,500.00 to cover administrative costs, must be submitted to the Board not less than three months from the date the Provisional License is approved with conditions.
- (B) Under no circumstances shall students be registered, tuition and fees collected, students brought to the CNMI, or instructional operations commenced until the provisional licensee has received written approval to begin such activities either in the Provisional License or in follow up approval after the applicant has met any conditions required by the BOR.

## 012 Term of License

#### 012.01 Non-Accredited Institutions

For those postsecondary educational institutions operating in the CNMI which are not accredited by an accrediting body recognized by a U.S. government agency, the term of the license shall be for a period not to exceed three years. The license may be extended for additional periods, determined by the BOR based upon licensee performance, provided that the institution meets those requirements specified in Section 013; and, all documentation and evaluation criteria stated in policies Sections 007 - 007.09. The Provisional License described in Section 011 shall count as one of the operational years for purposes of this section.

## 012.02 Accredited Institutions

When a postsecondary educational institution operating in the CNMI becomes accredited by an accrediting body recognized by a U.S. government agency, the term of the license

shall be for the duration of its accreditation period. The term for each extension of the license shall coincide with the institution's reaffirmation of accreditation.

## 013 Requirements for Extension of License

Three months prior to the expiration of the institution's license, the institution shall submit to the Office of the Board a report certifying continued compliance with the requirements specified in Sections **007** and **013** and **014** as appropriate; and, a nonrefundable Renewal fee of \$5,000.

The report shall contain a statement describing how the institution continues to meet each of the nine requirements.

The report shall also update its business plan, plans for improved programs and services, notify the BOR of any material changes anticipated in the future, including but not limited to, copies of student and faculty surveys, and copies of rental and lease agreements for facilities and services.

The report shall also certify compliance with an additional license requirement, Operational Status, the evaluation criterion being that the institution is operational, with students enrolled in its courses and actively pursuing its degree programs. Documentation related to this requirement is to be included in the report and shall consist of, but not limited to the following: Number of students enrolled in the institution each instructional term of each year during the current term of its license to operate. The names of degrees the institution awarded during the current term of its license to operate and the number of students awarded each degree each year.

The president and the chair of the governing board shall sign the report submitted for an extension of its license.

The Program Committee or its designee shall review and evaluate the report and conduct a site visit which will include inspection of facilities, meetings with students, faculty, and administrative and support services personal. Based upon the results of the Report review and site visit, the Program Committee or its designee shall then make a recommendation to the full BOR with respect to a request by the institution for a new or extended license.

#### 014 Supplemental Application/Substantive Application Modification

In the case where a licensee, or provisional licensee, has been granted by the BOR the applicant having met all of the conditions in these policies, makes a substantive change defined below, nonrefundable fee of \$1,000.00 to cover administrative costs shall accompany the notification of supplemental information and/or substantive change to an existing license.

A Supplemental Application shall be required to be submitted 30 calendar days prior to a substantive change, or when the changes makes meeting this deadline impossible, within five days of the change. Matters that are considered to be "Substantive" include but is not limited to:

- (A) A change in the name of the institution.
- (B) A change in the principal location, or an addition of a facility at another location of the institution of either direct or support facilities.
- (C) A change in ownership or governance of an institution.
- (D) Proposed changes, additions or deletions, of degree programs or course offerings.
- (E) Establishment of an additional instructional site away from the main campus.
- (F) Action by an accrediting agency which results in an institution being placed in a probationary status for more than six months, or which results in the loss of the institution's accreditation.

#### 015 Performance/Surety Bond

The applicant shall obtain a performance/surety bond, in an amount equal to 25% of the total tuition fees and other student costs, and the cost of return airfare for each student, or a cash amount placed in a Trust Account as provided by Section **007.04** (B)(viii). Failure to meet these requirements are grounds for suspension or revocation of the license by the BOR.

**015.01 Exemption.** For those applicants who can demonstrate through such means as a CPA audit that the institution's income from tuition and fees is less than \$10,000 per annum, the performance/surety bond shall be \$10,000.

#### 016 Filing of Complaints

When any person, persons, agency, or institution desires to file a formal complaint regarding an institution's violation of any part of the licensing policy or any part of the licensing condition, with such complaint possibly resulting in the suspension or revocation of the license of an institution as provided for in Section **017**, the following procedures shall apply:

- 1. All complaints must be presented in writing, be signed by the complainant, and detail the nature and particulars of the complaint;
- 2. The Board shall inform the concerned institution and shall provide a copy of the complaint;
- 3. The concerned institution shall have the right to respond to the complaint, providing it does so within 20 days after receiving notification of such a complaint.

The Board may initiate its own complaint, at its discretion, that relates to institutional violation of the requirements laid out in Section 007 and elsewhere in these policies or to conditions leading to possible suspension or revocation of an institution's license to operate a postsecondary educational institution in the CNMI as laid out in Section 017. The Board will comply with the procedure stated herein.

#### 017 Suspension or Revocation of License

The license issued to an institution is granted based upon the conditions laid out in the required documentation submitted with the License Application. Non-adherence to such conditions shall be cause for suspension or revocation of the institution's license to operate a postsecondary educational institution within the CNMI, at the discretion of the BOR.

Anyone of the following shall be cause for suspension or revocation of an institution's license to operate in the CNMI:

- (1) Misrepresentation in the documentation submitted with the License Application; or
- (2) Failure on the part of the institution to maintain the standards and conditions set forth by the institution in its License Application; or
- (3) Failure to operate in accordance with its stated mission and purposes;
- (4) Failure to maintain a performance/surety bond or Trust Account, or combination thereof:
- (5) Failure to meet financial obligations; and,
- (6) Failure to maintain facilities, personnel, and/or services as required and stated in its approve application for the license.

When the Board determines that a complaint, filed as provided for under Section **016**, may warrant suspension or termination of the institution's license to operate in the CNMI, the following procedures, including those in Section **9(ii)**, shall apply:

- 1. The Board Chair shall notify the affected institution of the possible suspension or revocation of its operating license and the reasons for such determination;
- 2. The Board chair shall appoint a team of not less than three members to conduct a review of the institution relative to the complaint, with such review to take place not more than 10 working days after appointment of the review team. The institution shall be given written notification of the institutional review, with such notification stating the purpose of the review, the names of the review team members, and the dates during which the review will be conducted;
- 3. The review team shall review institutional documents and interview faculty, staff, and students relative to the complaint;
- 4. Within 5 working days after completion of the institutional review, the review team shall submit to the Program Committee of the Board a written report containing the results of its findings and its recommended action;
- 5. Within 5 working days of the review team's submission of its written report to the Program Committee, the Program Committee shall consider the review team's report and determine its own recommendation to be made to the Board. The Program Committee shall provide the affected institution a copy of its recommendation, with supporting justification;
- 6. Within 10 working days after the Program Committee has determined its recommendation, the Board shall hold a session to make a final decision regarding the revocation or suspension of the institution's license to operate. The affected institution shall be notified of the Board session and shall be provided an opportunity to present its position regarding the action to be taken;

7. The Board shall meet in Executive Session to make its final decision regarding the institution and shall notify the institution of its decision by registered mail within 5 working days following the Executive Session.

## 017.01 Emergency suspension

The Chairperson of the BOR, based upon documented evidence of gross serious problems within the licensed institution identified in Section **017**, which present an immediate concern for the welfare of the students and/or staff of the licensee, may issue a Temporary Suspension of License and Operations letter to the chief operations officer or person immediately exercising administrative authority over the institution. The Letter is to be delivered by hand and a receipt obtained.

The Letter must state exactly what serious problems have caused the suspension, provide copies of documentation or other evidence which led to the issuance of the Letter and provide the institution 3 working days in which to provide adequate evidence for the Chairperson to rescind the Letter or take other action.

The Chairperson shall notify all BOR members of its action on the same day the Temporary Suspension of License and Operations letter is delivered to the licensee.

If the institution disputes the problem or problems cited for suspending operations then the timelines stated in Section 017 shall begin. However, unless compelling evidence to the contrary exists, the suspension shall remain in force during the Section 017 process.

#### 018 Student Records

All academic records, financial aid information, and other student records should be stored in a permanent form, such as microfilm or compact disc.

The Board will not be responsible for student records if an institution decides to close. A closing institution is expected to make arrangements with another college or university or with the CNMI archives to preserve student records, and to inform the Board about such arrangements. Prior to closure, the institution shall attempt to notify every current and past student by mail about the closure, where the academic records are being stored, and how students can access those records. The same information shall be placed in advertisements in all local newspapers for a period of not less than one week.

To the extent possible and practical, a copy of a student's academic record should also be forwarded to the individual student.

#### 019 Accreditation Status

The CNMI Board of Regents is not an accrediting body. Therefore, the Board's issuance of a license to establish an institution of higher education in the CNMI does not constitute accreditation of the institution. All institutions receiving a license are expected to seek accreditation from the Western Association of Schools and Colleges or from some other appropriate accrediting body recognized by a U.S. government agency; and, the BOR may at its discretion require the licensee to do so.

#### 020 Hold Harmless

The BOR as a whole and individually as well as its staff or designee(s) shall be held harmless for any and all actions taken, or not taken by the licensee, or any activity whatsoever taking place on or within licensee property and facilities, or by any student or paid or volunteer staff of the licensee.

## 021 Investigation

Nothing in this Licensing Policy shall effect the ability of the Division of Immigration to investigate and/or determine whether a licensed institution is in compliance with Immigration Regulation §706(H) concerning foreign student attendance.

**PAGE** 

# PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF PROPOSED REGULATIONS GOVERNING THE CERTIFICATION OF SIGNATURES FOR INITIATIVE, REFERENDUM, AND RECALL PETITIONS

The Office of the Attorney General of the Commonwealth of the Northern Mariana Islands pursuant to Articles IX and XVIII of the N.M.I. Constitution and in accordance with the Administrative Procedures Act, 1 CMC § 9101, et seq., hereby notifies the general public that the Proposed Regulations Governing The Certification Of Signatures For Initiative, Referendum, and Recall Petitions as published in the Commonwealth Register on January 17, 2005 (Vol. 27, No. 01, p. 23789) and after the appropriate time for public comment, were adopted by the Office of the Attorney General with minor changes. The final adopted version of the regulations is attached to this notice.

Copies of the Regulations Governing The Certification Of Signatures For Initiative, Referendum, and Recall Petitions are also available at the Office of the Attorney General, Capitol Hill, Saipan, MP, 96950.

Dated: February 15, 2005.

Pamela Brown Attorney General

Filed by:

Received

Thomas A. Tebuteb

**SAA** 

Pursuant to 1 CMC 2153, the proposed regulations have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Attorney General

# REGULATIONS GOVERNING THE CERTIFICATION OF SIGNATURES FOR INITIATIVE, REFERENDUM, AND RECALL PETITIONS

These regulations were proposed in the January 17, 2005 issue of the Commonwealth Register (Vol. 27, No. 01, p. 23789). At that time, the public was asked to comment on the proposed notary regulations and make suggestions for their modification or improvement. The Office of the Attorney General received two sets of comments.

As a result of our review of the comments, several minor changes were made in the regulations as proposed. This notice sets forth the comments and our responses to them as well as the regulations as adopted.

## **COMMENTS AND RESPONSES**

**Comment:** There are only five types of action ([a] initiative petition (for asking whether there should be a constitutional convention); [b](popular or legislative initiative (for Constitutional amendments); [c]"people's initiative" (for enacting laws); [d]referenda (for rejecting laws); and [e]recalls (for recalling elected officials)) where petitions are called for in the Constitution, and the treatment for them is generally similar - with some exceptions. But it is not easy for someone interested in only one of those actions to single out all of the pertinent sections in the regulations as they now stand. And yet that is the way these regulations would presumably generally be used - by people interested in submitting a petition for only one of the five actions.

**Response:** The sections are currently organized around the various petition requirements and stages of the approval process. The requirements and descriptions of the approval process are then subdivided into the categories for each type of petition with general requirements applicable to all types of petitions at the end of each Article. Organizing the requirements and approval process around the types of petitions with general requirements at the end is simply a different way to organize and does not appear to be clearer. It will also make the regulations repetitive. The organization was not changed.

**Comment:** It would appear that an inordinate amount of time - five months - is allowed to elapse between the time a petition is initially submitted to the AG's office and the time of actual balloting. The AG's office is given anywhere from 30 to 50 days to certify signatures, and up to 20 more days to certify additional signatures if needed. Taking the maximum time frames, that is 50 days, plus 10 for petitioners to add names, plus another 20 to certify additional names, that amounts to only 80 days. Yet petitioners are required to submit their petitions 150 days before a general election (unless a special election is called for). That leaves 70 days for the Election Commission to prepare ballots. Surely this could be streamlined by at least 30 days?

The Attorney General is required to present most certifications to the Commonwealth Election Commission (the "Commission") no later than ninety days

before each general election. P.L. 12-55, §6351. The Commission has asked that all certifications be submitted no later than ninety days before an election so it can properly prepare the ballots and have sufficient time for public education.

Past experience shows that the Attorney General's Office generally needs thirty days to certify petitions for initiatives or referendums proposing changes to local or Commonwealth-wide laws. Longer periods are required for certifications for initiatives that propose Constitutional Amendments, as the number of signatures in those petitions are significantly greater than the number required for other petitions. Problems can also arise when multiple petitions are submitted in the same year at the same time, as happened during the last election cycle. The Attorney General has proposed the early and late filing periods to attempt to spread out the time during which it receives petitions for certification. And it has encouraged individuals to file during the early period by giving them an opportunity to gather more signatures if too many signatures are struck.

Because of the limitations imposed by law and the practical experience of the Office of the Attorney General with certifications, none of the timelines were changed except all the recall timelines were made consistent.

Comment: It should be noted that the proposed regulations do not include provision for the requirements for initiative petitions asking whether a ConCon should be held (See Article XVIII, Section 2 of the Constitution).

**Response:** There is no need for the Attorney General to promulgate regulations regarding the calling of Constitutional Conventions. The N.M.I. Constitution provides that either the Legislature or the Governor (if the Legislature fails to act) is the party who informs the Commission to place the Convention question on the ballot. N.M.I. Constitution, Art. 18, § 2(a). There is no certification by the Attorney General.

**Comment:** Sections 2-101, 102 and 103 are mislabeled. The sections do not offer a determination of individuals qualified to vote. They offer a determination of the NUMBER of individuals qualified to vote. I would suggest the word "number" be inserted after "Determination of" in each instance.

**Response:** This change was made.

Comment The sectional headings should be reversed throughout, so that the action affected is identified first - for example: "Section 2-102 Recall Petitions - Determination of Individuals Qualified to Vote, etc." This, too, would make identifying pertinent sections easier for those interested in only one of the five actions.

Response: This change was made.

Comment: The provision, in Sections 2-102 and 2-103, that the AG shall use the total number of voters registered by the Election Commission on the day the petition is submitted for certification as the number required on the petitions for recall or popular

initiative in a special election provides a moving target. How can the petitioners be sure of how many signatures they will need? A more useful date might be the number of voters registered for the previous general election.

Response: The certification date addressed in this comment only concerns recalls or popular initiatives involving special elections. Under the regulations, such petitions can be submitted any time except immediately before elections. The Commission generally will inform individuals within a short time frame how many registered voters there are in the Commonwealth. Because individuals submitting petitions involving special elections generally do not have to deal with required filing deadlines to initially file their petition and can check with the Commission before filing, the current determination date seems reasonable. Moreover, registration numbers generally do not change significantly from day to day except shortly before elections and special election petitions cannot be filed during this time.

Comment: Put simply, a petitioner will *never* know -- in advance of the petition deadline -- how many signatures he needs prior to submission of his petition. He will always run the risk of submitting a deficient petition simply by following the rules, or even by submitting his petition well in advance of the deadline. As a result, a person may believe, at the time that he submits a petition, that he has the requisite number of signatures, but because more people have registered to vote between the time he submits his petition and the time the Commonwealth Election Commission issues a list of the registered voters, he may find his petition deficient in numbers. In such a case, "the party circulating the petition will not receive additional time to obtain signatures." Proposed Regulations, Art. III, § 3-107. This is unfair. The people of the Commonwealth should not have to guess at how many signatures they will need. A regulatory system must offer predictability and guidance to the people being regulated, particularly when the subject of regulation is something as important as the constitutional right to petition for a change in the law or Constitution.

Response: The Attorney General can establish reasonable procedures for the certification process. <u>Tenorio v. Superior Court</u>, 1 N.M.I. 1, 17-20 (1989) (upholding procedures used for certification process). Indeed, a similar determination date and methodology was upheld in the <u>Tenorio</u> case. In addition, the commenters' concerns are overstated. Individuals can check with the Commission prior to filing. Moreover, most types of petitions can still be filed thirty days after the determination date.

**Comment:** Re Section 2-103: The Constitution refers to Popular Initiatives. For reasons of clarity, the regulations should use the same wording as is found in the Constitution, rather than the very awkward "Initiative Petitions Proposing Constitutional Amendments..." as is done in Section 2-103, for example. The same is true for all five actions.

Response: The regulations must distinguish three different types of initiative petitions: N.M.I. Constitutional amendments, Commonwealth-wide law amendments, and local law amendments. Each are "popular initiatives," as they are submitted to the public for

decision. It would appear to be more confusing to call only one of the three a "popular initiative." For this reason, the current phrasing remains unchanged.

**Comment:** In Section 2-104, what is the purpose of including both (a) and (b)? If the person has properly registered to vote as called for in (b), then (a) is not necessary, is redundant.

Response: The Commission diligently updates the rolls of registered voters and removes individuals whom it learns are registered but should not be. However, if there is an individual who signs a petition and the Attorney General knows that the individual is not qualified to vote, the Attorney General cannot count the signature even if that individual is registered. This section has not been changed because of this concern.

This regulation [Section 2-104] imposes additional qualifications upon Comment: individuals who are qualified to vote beyond that required by the N.M.I. Constitution and laws, and as a result, it not only eliminates the ability of qualified individuals to invoke their rights to petition for change in the laws or N.M.I. Constitution, but it unconstitutionally adds restrictions to the constitutionally-enumerated list of qualifications. The Proposed Regulations add to these qualifications [in the N.M.I. Constitution] by requiring "persons qualified to vote" to be registered to vote as of the date that they sign the petition and as of the date that the Commonwealth Election Commission compiles its list of registered voters. As a result, people who are otherwise "qualified to vote" are deprived of the right granted to them by the N.M.I. Constitution to sign a petition for change in the Commonwealth laws or Constitution.

Response: The Attorney General's definition of the term "qualified to vote" is consistent with the intent of N.M.I. Constitution. The N.M.I. Constitution does not define this term, but the Analysis of the Constitution of the Northern Mariana Islands (1976) does. It provides that "[p]ersons qualify to vote who meet the criteria set out in article VII, section 1, and who are registered to vote provided by law." Analysis at 128 (emphasis added).

Comment: In Section 3-101, I would submit that specifying the physical location of where the petitions are to be submitted could easily cause problems. What if the office moves? What if it has to temporarily re-locate, for whatever reason? It would be more prudent, it seems to me, to state that the petitions must be turned in to the AG wherever the AG's official office happens to be at the time - or words to that effect.

The Attorney General's Office is currently located at several different locations on Saipan. Indicating the one office at which petitions will be accepted will be helpful to the public and help to avoid confusion. If the Attorney General moves, the regulations can be changed either by emergency regulation or through the regular promulgation and adoption process, depending on the circumstances of the move.

Comment: Article III §§ 3-101 and 3-103 both provide time periods within which the Attorney General will refuse to accept petitions for certification. Section 3-101 provides

that constitutional initiative petitions may not be submitted "within one hundred fifty (150) days of a regular general election." Proposed Regulations, Art. III § 3-101 (emphasis added). Section 3-103 likewise imposes the same restriction upon recall petitions. See Proposed Regulations, Art. III § 3-103 (providing that recall petitions "may not be submitted within one hundred fifty days of a regular general election") (emphasis added). The N.M.I. Constitution generally does not empower the Attorney General to refuse to accept petitions. But see N.M.I. Const. Art. IX § 3(e) ("A recall petition may not be filed against a public official more than once in any year or during the first six months of a term in office."). Rather, the Constitution contemplates that petitions, with the limited exception of certain recall petitions, may be accepted for certification at any time, and that once the petition has been certified, it "shall be submitted to the voters at the next regular general election unless special elections are provided by law for this purpose." N.M.I. Const. Art. IX § 3(c) (recall petitions). These particular regulations, by contrast, prohibit the submission of recall and constitutional amendment petitions 150 days of an election -- that is, 150 days before and after a general election. Thus, between general elections, this allows a person only two years and four months within which to submit a petition to amend the constitution or recall a public official.

Response: The limitations contained in Sections 3-101 and 3-102 were meant to apply to the time "prior to" elections. The phrasing each time a time limitations was mentioned were made consistent.

Comment: [B]ecause the Constitution does not set forth a minimum time period after which the certified recall petition should be submitted to the voters prior to the next general election, the Attorney General is not empowered to read such a requirement into the Constitution, particularly where, as here, the Framers included a specific time period for initiatives and referendums. See N.M.I. Const. Art. IX § 1(c) (certified initiative petition shall be submitted to voters at the general election held "at least ninety days from the date that the petition is certified"); see also N.M.I. Const. Art. IX § 2(c) (certified referendum petition shall be submitted to voters at a general election held "at least thirty days from the date that the petition is certified"); but see N.M.I. Const. Art. IX § 3(e) ("A recall petition may not be filed against a public official more than once in any year or during the first six months of a term in office.") (emphasis added). As such, these Proposed Regulations exceed the Attorney General's authority under the Constitution.

Response: The limitation on when a recall petition may be submitted appears to be consistent with the authority of the Attorney General. As a threshold matter, the commenter is mistaken. Individuals can submit recall petitions for certification until one hundred twenty days before a general election. Section 3-113. In addition, the Attorney General can impose reasonable procedures for the certification process. Superior Court, 1 N.M.I. 1, 17-20 (1989) (upholding reasonable procedures for certification process). Because of the time needed prior to elections for the certification process as well as preparation and public education by the Commission, this section was not changed.

Comment: Section 3-104 begins with the words, "every petition." What exactly does this mean? In the case with which I am familiar, dozens of people had bunches of signature pages - together with a copy of the text at issue - which they took to their work, or neighborhood, or to community meetings, or what-have-you - in soliciting signatures. I would assume here the reference is to the accumulated petitions, but I think it might be a good idea to make that clear.

Response: "Every petition" means this requirement addresses all five types of petitions.

Separately, the requirement in Section 3-104 addresses the one individual submitting the complete petition application. This requirement provides the Attorney General with notice of who to contact with respect to the certification (or denial of certification) of the petition. This is a different requirement than the affidavit requirement found in Section 3-106. Under Section 3-106, each individual who collects signatures must sign an affidavit for the signatures that they collect. Multiple affidavits with attached signature pages may be submitted with one petition, but there can be only one contact person for the entire petition.

Comment: I would, in this section [Section 3-104], also suggest that the various subparts (a, b, and c) be broken out as separate paragraphs for easier reading. On the other hand, if each action had its own section, these would be subsumed under their respective actions, rather than lumped together here only to have to be disentangled by the reader/petitioner.

**Response:** Section 3-104 is sufficiently clear without this proposed division.

Comment: Article III § 3-104 mandates that the petition include a contact person, along with an address and telephone number. Proposed Regulations, Art. III § 3-104. While this requirement may be a good recommendation to enable a petitioner to correct deficiencies in the petition, the Proposed Regulations go farther: "The Attorney General shall refuse to certify petitions that are not accompanied by this information." *Id.* It is unclear why the requirement of a contact person must be mandatory — indeed, a condition precedent to certification. This regulation grants the Attorney General the authority to refuse to certify petitions based upon an additional requirement *not* set forth in the N.M.I. Constitution: The petition must include a contact person. Because this requirement is in addition to the requirements of the N.M.I. Constitution, it exceeds the Attorney General's certification authority. If the petition meets both constitutional requirements, then regardless of whether there is a contact person, the Attorney General must certify that the petition meets the constitutional requirements.

Response: The Attorney General can establish reasonable procedures for the certification process. <u>Tenorio v. Superior Court</u>, 1 N.M.I. 1, 17-20 (1989) (upholding procedures used for certification process). The Attorney General needs someone to contact regarding issues that arise with respect to the petition as well as to inform regarding the approval or denial of certifications. Requiring a contact person for the petition is a reasonable requirement.

Comment: In Section 3-105(4) there is reference to noting on all signature pages whether or not the action is to be taken at a special or general election. This would be less confusing if each action were separately listed, and this requirement only listed where pertinent.

**Response:** Section 3-105(4) is sufficiently clear without further change.

**Comment:** Section 3-106 requires each petition and attached signature pages to include an affidavit. If, as described above, dozens of people have collected signatures, would this require each one to sign such an affidavit? If not, how can the person submitting the petition and signature pages swear to having witnessed the execution of all signatures?

Response: Each individual who collects signatures must sign an affidavit for the signatures that they collect. Multiple affidavits with attached signature pages may be submitted with one petition.

Comment: Section 3-106(3) requires that the person signing the affidavit provide information on when the signatures were obtained. Since the signature page shows the date of signature of the individual signing the petition, why is this necessary? And given that a single signature page may contain several different dates, how can this be accomplished anyway?

The individual providing the affidavit signs it under oath, unlike the Response: individuals signing the petition. (It seems too burdensome to impose the requirement to sign under oath on all the signatories.) This provides a check on the validity of the signatures.

Separately, the affidavit may indicate all the dates on which signatures were collected, whether signatures were collected on one day or multiple days.

**Comment:** Section 3-106(4) provides that the affiant swear that he or she has not paid, etc. But it does not seem to rule out the affiant him/herself having been paid.

**Response:** Individuals can pay people to help collect signatures. Paying people to sign petitions is prohibited.

Comment: Article III § 3-106 further requires the petitions to be accompanied by an affidavit. Proposed Regulations, Art. III § 3-106. This is not a requirement that is included in the Constitution, and because it has nothing to do with the Attorney General's certification that the constitutional requirements have been meet, it exceeds the certification authority granted by the Constitution.

Response: The Attorney General can establish reasonable procedures for the certification process. Tenorio v. Superior Court, 1 N.M.I. 1, 17-20 (1989) (upholding procedures used for certification process). The Attorney General uses the affidavit requirement as one of the reasonable methods by which to prevent against fraud.

**Comment:** Section 3-107 does not make sense as written. The second sentence should be re-phrased to read, "If a sufficient number of signatures of people believed to be qualified voters in the Commonwealth . . . ." If there were a sufficient number of qualified voters per se, there would be no reason for the AG's office to find an insufficient number of signatures.

**Response:** The wording in this section and other similar sections was changed.

Comment: The last sentence of that section should read, in effect, "Should the submitted petition not contain a number of signatures equal to the number required as declared by the AG's office, no additional time will be provided . . . . "

**Response:** This comment is simply a stylistic word choice. As the proposed regulation and this comment are equally clear, the proposed regulation was not changed.

Comment: Section 3-107 refers to the AG notifying petitioners of the validity of the signatures 110 days prior to the next election. Section 3-108 refers to the AG notifying petitioners of the validity of the signatures 40 days after submittal. In actuality, in both cases, the time period is 40 days after the petition was submitted to the AG. It would be much simpler if the time period were referred to in the same terms in both cases.

Response: The wording in these sections and other similar sections was changed to be consistent.

Comment: I found Section 3-108 rather muddy to begin with. At one point, the Section states, unqualifiedly, that the party may re-file the petition with additional signatures at any time. Later in the same section it qualifies that statement by saying that only if the re-filing is done within ten days will it be considered the same petition. Otherwise, the next sentence says, it will be considered a new petition (leaving unsaid that in this case, the petitioners will again have to wait 40 days for notice of certification (or not) by the AG). In fact, in the latter case, the process starts all over, and it is not the same petition.

**Response:** This comment addresses only petitions for Constitutional amendments to be voted on during special elections. Such petitions may be submitted at almost any time and, if rejected, can be re-submitted after short or long delays. If a petition is rejected for an insufficient number of signatures but the petition is re-filed shortly after the rejection, the Attorney General's review will be shorter because only the new signatures and the (presumably) few changes to the status of voters will have to be checked. However, if there is a long time lag for re-submission of the same signatures, a longer review process will have to be undertaken. As a result, the Attorney General's Office has allowed individuals to re-file the same signatures, but will apply the timelines for new petitions if the re-filing occurs later than ten days after denial of certification.

Comment: Section 3-109 provides for a 30-day period for notification by the AG of the sufficiency signatories. It is not clear why a distinction needs to be made between different types of action. In addition, the same comment as was made regarding the wording of Section 3-107 (see above) applies to this section as well.

Response: There is only one thirty-day period mentioned in this section, it is unclear to what the commenter refers.

Comment: Section 3-110 baffles me completely. If "late-filed petitions" - filed only 120 days before a general election - are acceptable, why require that petitions be filed 150 days before a general election?

Response: Petitions for Commonwealth-wide or local initiatives are not required to be filed one hundred and fifty days prior to general elections. The Attorney General has proposed the early and late filing periods to attempt to spread out the time during which it receives petitions for certification. It has encouraged individuals to file during the early period (one hundred and fifty days before elections) by giving them an opportunity to gather more signatures if too many signatures are struck. Individuals can file petitions for Commonwealth-wide or local initiatives as late as one hundred twenty days before Individuals filing during the late but acceptable period will not, general election. however, be given a second chance to collect more signatures.

Comment: The same change should be made to Section 3-111 and 3-112 as is suggested for the wording of Section 107 above regarding insertion of the words "people believed to be" qualified.

**Response:** This change was made.

**Comment:** In Section 3-113, the same question arises as did in Section 3-110.

**Response:** See response to comment regarding Section 3-110.

Comment: I would ask, re Section 315, why the AG requires 60 days to certify names for a recall petition, when in the other four cases, the AG requires only 40 or 30, in case of late-filed general election recall petitions.

**Response:** The timelines regarding recall petitions were made consistent.

Comment: I would ask why Section 4-101 provides for the submission of special recall elections to the Governor. The Constitution makes no note of this requirement. In fact, it says, in Article IX, Section 3(c) that once certified by the AG, the recall petition shall be submitted to the voters.

Response: The Governor sets the dates and timelines for special elections. P.L. 12-18, §§ 6502, 6505. Therefore, the Governor must be provided notice of any certification regarding a special election.

Previously, there was no indication that notice would be provided to the Governor for petitions regarding N.M.I. Constitutional amendments to be voted on at special elections. This issue was addressed, so that the Governor now will receive notice since he must call such a special election. P.L. 12-18, § 6505.

Comment: Section 5-101 states that the AG shall submit all petitions that he or she has certified as complying with Article XVIII Section 4(a) (except Special Election petitions) to "the Legislature." It would be more precise and accurate to say, "to both houses of the Legislature" to assure that each got a copy at the same time.

**Response:** This change was made.

Comment: Moreover, it would be clearer to simply say that the AG will submit <u>all</u> <u>popular initiatives proposing constitutional amendments</u> (except Special Election petitions) to both houses of the Legislature.

**Response:** This comment is simply a stylistic word choice. As the proposed regulation and this comment are equally clear, the proposed regulation was not changed.

Comment: Section 6-601 states that a special election petition for a popular initiative to amend the Constitution will be submitted to the Commonwealth Election Commission the day the petition is certified. Why is there no time frame specified here between the submission and the date of the special election? The CEC needs time to prepare ballots, etc., just as it does for regular petitions. This does not seem to insure that the CEC is given the needed time.

Response: The Governor sets the dates and timelines for special elections. P.L. 12-18, §§ 6502, 6505. The date the Attorney General certifies a petition for a special election does not trigger any obligation on the Commission to hold a special election immediately. The Attorney General, by immediately providing notice to the Commission of the certification, will provide the maximum notice possible to the Commission to prepare for a special election that the Governor calls.

**Comment:** Section 7-102 does not appear to allow for typhoon days, unless "other non-work day" is meant to cover days lost to typhoons?

**Response:** Other non-work days include days during which the Office of the Attorney General is closed due to typhoons as well as other days for which the office is closed that do not fit within the listed categories (i.e., weekends or scheduled holidays).

Comment: In several places, the Proposed Regulations provide that the Attorney General will notify the petitioning party "regarding how many valid signatures, as determined by the Attorney General" the petition contains. See, e.g., Proposed Regulations, Art. III §§ 3-107, et seq. Yet, nowhere do the Proposed Regulations provide any objective criteria regarding how the Attorney General will determine whether the

signatures are "valid." This exposes the certification process to abusive tactics, particularly if a proposed law is contrary to the aims of the Administration in general or the Attorney General in particular. In short, the Proposed Regulations should also include a section that sets forth how the Attorney General will determine that a signature is valid or invalid.

**Response:** The Attorney General validates signatures by comparing the voter records on file with the Commission with the signatures on the petition. It is unclear how this could be spelled out in greater detail. If petitioners disagree with determinations by the Attorney General, they have the ability to appeal the decision to Superior Court. 1 CMC 9101, et seq.

## REGULATIONS

## ARTICLE I. GENERAL PROVISIONS

## Section 1-101. Purposes.

Articles IX and XVIII of the N.M.I. Constitution provide that the Attorney General must certify all popular initiative petitions that propose constitutional amendments and all initiative or referendum petitions that propose amendments to laws of the Commonwealth of the Northern Mariana Islands (the "Commonwealth") or local laws of a Senatorial District of the Commonwealth as well as all recall petitions before the Commonwealth Election Commission places the petition question on the ballot. The intent of these regulations is to establish procedures and guidelines by which the Attorney General shall certify that the requirements of Articles IX and XVIII of the N.M.I. Constitution have been met so that such petitions may be placed on an election ballot.

## Section 1-102. Authority.

These regulations are promulgated pursuant to Articles IX and XVIII of the N.M.I. Constitution, whereby the Attorney General is required to issue certifications regarding compliance with the Constitution.

## Section 1-103. Severability.

If any provision of these regulations or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these regulations and to this end, the provisions of these regulations are declared to be severable.

## ARTICLE II. NUMBER OF SIGNATURES REQUIRED

## Section 2-101. Initiative Or Referendum Petitions -- Determination Of Number Of Individuals Qualified To Vote.

Except as provided for in Section 2-103, for initiative or referendum petitions, the Attorney General shall determine the total number of individuals qualified to vote by using the total number of persons registered to vote in the Commonwealth by the Commonwealth Election Commission one hundred fifty (150) days prior to the next general election.

## Section 2-102 Recall Petition -- Determination Of Number Of Individuals Qualified To Vote.

The Attorney General shall determine the total number of individuals qualified to vote for a recall petition by using the total number of persons registered to vote in the Commonwealth by the Commonwealth Election Commission. If the party submitting the recall petition seeks to have it included on the ballot in the next general election ("General Election Recall Petition"), the Attorney General shall use the total number of voters registered by the Commonwealth Election Commission one hundred fifty (150) days prior to the next general election. If the party submitting the recall petition seeks to have it included on the ballot in a special election ("Special Election Recall Petition"), the Attorney General shall use the total number of voters registered by the Commonwealth Election Commission on the day the petition is submitted to the Attorney General for certification.

## Section 2-103. Initiative Petitions Proposing Constitutional Amendments To Be Included On The Ballot During Special Elections -- Determination Of Number Of Individuals Qualified To Vote For.

If a party submits an initiative petition for a constitutional amendment that the party seeks to have included on the ballot in a special election ("Special Election Popular Constitutional Initiative Petition"), the Commonwealth Election Commission shall determine the total number of registered voters on the day the petition is submitted to the Attorney General for certification.

## Section 2-104. Who May Sign Petition.

An individual may sign an initiative, referendum, or recall petition, and the Attorney General shall count such signature, if he or she: (a) is eligible to vote under the N.M.I. Constitution and Commonwealth law, and (b) has properly registered to vote with the Commonwealth Election Commission at the time he or she signs the petition and as of the date of the Commonwealth Election Commission's determination of the total number of individuals qualified to vote for the petition. All individuals who meet this criteria are considered "qualified to vote," as that phrase is used in the N.M.I. Constitution.

## ARTICLE III. ATTORNEY GENERAL CERTIFICATION

## Section 3-101. Constitutional Initiative Petition -- Submission to Attorney General.

Except for Special Election Popular Constitutional Initiative Petitions, all petitions regarding amendments to the N.M.I. Constitution shall be submitted with the required number of signatures to the Attorney General at the Office of the Attorney General, Administration Building, Capitol Hill, Saipan, no later than one hundred fifty (150) days prior to the next regular general election. The Attorney General shall not certify any petitions that are submitted after this deadline. Special Election Popular Constitutional Initiative Petitions may be submitted to the Attorney General at any time, except they may not be submitted within one hundred fifty (150) days prior to regular general election.

## Section 3-102. Commonwealth-wide Or Local Initiative Or Referendum Petition --Submission to Attorney General.

All initiative or referendum petitions regarding Commonwealth-wide or local laws shall be submitted with the required number of signatures to the Attorney General at the Office of the Attorney General, Administration Building, Capitol Hill, Saipan, no later one hundred and fifty (150) days prior to the next regular general election. The Attorney General shall not certify any petitions that are submitted after this deadline, except as provided in Section 3-110.

## Section 3-103. Recall Petitions -- Submission to Attorney General.

For General Election Recall Petitions, the recall petition shall be submitted with the required number of signatures to the Attorney General at the Office of the Attorney General, Administration Building, Capitol Hill, Saipan, no later one hundred and fifty (150) days prior to the next regular general election. The Attorney General shall not certify any General Election Recall Petition that is submitted after this deadline, except as provided in Section 3-113. Special Recall Petitions may be submitted to the Attorney General at any time, except they may not be submitted within one hundred fifty (150) days prior to a regular general election.

## Section 3-104. Contact Person.

Every petition submitted to the Attorney General's Office shall be accompanied by a written statement identifying the name of a person submitting the petition, and his or her address and phone number. The Attorney General shall refuse to certify petitions that are not accompanied by this information.

## Section 3-105. Petition and Signature Pages.

- Initiative Petitions. Each initiative petition shall contain the full text of the **(1)** proposed amendment. All signature pages must be attached to a copy of the petition containing the full text of the proposed amendment. If an initiative petition proposes a new law or constitutional amendment, the "full text of the proposed amendment" means the full text of the new proposal. If the initiative petition proposes to modify an existing law or constitution section, the "full text of the proposed amendment" means the full text of relevant sections of the existing law or constitutional section with the proposed changes incorporated and highlighted in bold for new text or with strikethroughs for proposed deleted text. For petitions that propose to modify existing laws or constitutional sections, the sections of the existing law or N.M.I. Constitution that are not proposed to be changed and are not necessary for the understanding of the sections that are proposed to be modified do not need to be attached to the signature pages.
- (2) <u>Referendum Petitions</u>. Each referendum petition shall contain the full text of the law sought to be rejected and all signature pages shall be attached to a copy of the petition containing full text of the law sought to be rejected.
- (3) Recall Petitions. Each recall petition shall identify the public official sought to be recalled by name and office and state the grounds for recall. All signature pages for the recall petition shall be attached to a copy of the petition containing the name and office of the public official sought to be recalled and the grounds for the recall.
- (4) Special Requirements For All Petitions Involving Recall And Popular Constitutional Amendment Petitions. In addition to the other requirements of this section, the party submitting petitions regarding recalls or popular constitutional amendments must indicate whether the petition is to be included on the ballot of a special or general election. This information must also be included on all signature pages. If this information is not included, the party requesting certification shall be deemed to have submitted a petition for inclusion at the next general election.
- (5) Requirements of all petitions. The signature pages for all petitions shall contain a place for the signing party to provide the following information:
  - (a) Signature;
  - (b) Printed name;
  - (c) Date of birth or voter registration affidavit number;
  - (d) Mailing address;
  - (e) Voting district; and
  - (f) Date of signature.

All information must be included for a signature to be certified as valid.

Individuals submitting petitions are encouraged to use the form attached to these regulations as Exhibit A for their signature pages.

## Section 3-106. Affidavit Accompanying Petition and Signatures.

Each petition and attached signature pages shall be submitted to the Attorney General with an affidavit signed by the individual or individuals who circulated the petition and obtained the signatures stating the following:

- That the person signing the affidavit is the person who obtained the **(1)** signatures attached to the petition;
- **(2)** That the person signing the affidavit witnessed the execution of all signatures attached to the petition, and to the best of his or her knowledge the signatures are of the persons who they purport to be;
- When the signatures were obtained, the information required to be (3) attached or included in the petition by Section 3-105 was attached or included and each person signing was advised of its presence; and
- **(4)** That the affiant has not paid or will not in the future pay and that the affiant believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition.

A declaration made in compliance with 7 CMC § 3305 and consistent with the requirements of this section may be submitted in lieu of an affidavit.

## Section 3-107. Constitutional Amendment -- Attorney General Certification Notice.

Except for Special Election Popular Constitutional Initiative Petitions, the Attorney General shall notify the party who submitted a petition regarding a constitutional amendment regarding how many valid signatures, as determined by the Attorney General, were submitted in support of the petition forty (40) days after the petition is submitted for certification. If a sufficient number of signatures were submitted, but the Attorney General was unable to certify a sufficient number of signatures to meet the constitutional requirements, the party who submitted the petition shall have an additional ten (10) calendar days to file additional signatures in support of the petition. If an insufficient number of signatures were submitted as specified in these regulations, the party circulating the petition shall not receive any additional time to obtain signatures.

## Section 3-108. Special Election Popular Constitutional Initiative Petitions --Attorney General Certification Notice.

The Attorney General shall notify the party who submitted a Special Election Popular Constitutional Initiative Petition regarding how many valid signatures, as determined by the Attorney General, were submitted in support of the petition, forty (40) days after the petition is submitted for certification. If the Attorney General is unable to certify a sufficient number of signatures to meet the constitutional requirements, the party may refile the petition with additional signatures at any time. If a re-filed petition is filed within ten (10) days of the Attorney General's denial of certification, the Attorney General shall inform the party how many valid signatures, as determined by the Attorney General, were submitted in support of the petition, within twenty (20) days of the re-filing. If a re-filed petition is filed more than ten (10) days after the Attorney General's first denial of certification, it shall be deemed to be a new petition.

## Section 3-109. Initiative Or Referendum Regarding Commonwealth-wide Or Local Law -- Attorney General Certification Notice.

The Attorney General shall notify the party who submitted a timely initiative or referendum petition regarding a Commonwealth-wide or local law regarding how many valid signatures, as determined by the Attorney General, were submitted in support of the petition thirty (30) days after the petition is submitted for certification. If a sufficient number of signatures were submitted as specified in the N.M.I. Constitution, but the Attorney General was unable to certify a sufficient number of signatures to meet the constitutional requirements, the party who submitted the petition shall have an additional ten (10) days to file additional signatures in support of the petition. If an insufficient number of signatures were submitted, the party circulating the petition shall not receive any additional time to obtain signatures.

## Section 3-110. Accepted Late-Filed Petitions Regarding Certification For Initiatives Or Referendums Regarding Commonwealth-wide Or Local Law -- Submission To Attorney General.

All initiative or referendum petitions regarding amendments to Commonwealth-wide or local laws submitted with the required number of signatures to the Attorney General at the Office of the Attorney General, Administration Building, Capitol Hill, Saipan, no later one-hundred and twenty (120) days prior to the next regular general election shall be considered Accepted Late-Filed Initiative Petitions. The Attorney General will accept all such Accepted Late-Filed Initiative Petitions for certification. The Attorney General shall not certify any petitions that are submitted after this deadline.

## Section 3-111. Accepted Late-Filed Initiative Petition -- Attorney General Certification Notice.

The Attorney General shall notify the party who submitted an Accepted Late-Filed Initiative Petition regarding how many valid signatures, as determined by the Attorney General, were submitted in support of the petition thirty (30) days after the petition is submitted for certification. If the Attorney General is unable to certify a sufficient number of signatures to meet the constitutional requirements, the party who submitted the petition shall not have another opportunity to submit additional signatures in support of the petition.

## Section 3-112. General Election Recall Petition -- Attorney General Certification Notice.

The Attorney General shall notify the party who submitted a timely General Election Recall Petition regarding how many valid signatures, as determined by the Attorney General, were submitted in support of the petition thirty (30) days after the petition is submitted for certification. If a sufficient number of signatures were submitted as specified in the N.M.I. Constitution, but the Attorney General was unable to certify a sufficient number of signatures to meet the constitutional requirements, the party who submitted the petition shall have an additional ten (10) days to file additional signatures in support of the petition. If an insufficient number of signatures were submitted as specified in these regulations, the party circulating the petition shall not receive any additional time to obtain signatures.

## Section 3-113. Accepted Late-Filed Petitions For General Election Recall Petition --Submission To Attorney General.

All General Election Recall Petitions submitted with the required number of signatures to the Attorney General at the Office of the Attorney General, Administration Building, Capitol Hill, Saipan, no later one-hundred and twenty (120) days prior to the next regular general election shall be considered Accepted Late-Filed General Election Recall The Attorney General will accept all such Accepted Late-Filed General Election Recall Petitions for certification. The Attorney General shall not certify any petitions that are submitted after this deadline.

## Section 3-114. Accepted Late-Filed General Election Recall Petition -- Attorney General Certification Notice.

The Attorney General shall notify the party who submitted an Accepted Late-Filed General Election Recall Petition regarding how many valid signatures, as determined by the Attorney General, were submitted in support of the petition thirty (30) days after the petition is submitted for certification. If the Attorney General was unable to certify a sufficient number of signatures to meet the constitutional requirements, the party who submitted the petition shall not have another opportunity to submit additional signatures in support of the petition.

## Section 3-115. Special Election Recall Petitions.

Thirty (30) days after receiving a recall petition to be submitted at a special election, the Attorney General shall notify the party who submitted the petition regarding how many valid signatures, as determined by the Attorney General, were submitted in support of the petition. If the Attorney General is unable to certify a sufficient number of signatures to meet the constitutional requirements, the party may re-file the petition with additional signatures at any time. If a re-filed petition is filed within ten (10) days of the Attorney General's denial of certification, the Attorney General shall inform the party how many valid signatures, as determined by the Attorney General, were submitted in support of the petition, within twenty (20) days of the re-filing. If a re-filed petition is filed more than ten (10) days after the Attorney General's first denial of certification, it shall be considered a new petition.

## ARTICLE IV. CERTIFICATION TO THE GOVERNOR

## Section 4-101. Deadline for Submitting Petition to Governor.

The Attorney General shall submit all Special Election Recall Petitions and Special Election Popular Constitutional Initiative Petitions that he or she has certified as complying with the N.M.I. Constitution to the Governor on the day the petition is certified.

## ARTICLE V. CERTIFICATION TO LEGISLATURE

## Section 5-101. Deadline for Submitting Petition to Legislature.

Except for Special Election Popular Constitutional Initiative Petitions, the Attorney General shall submit all petitions that he or she has certified as complying with Article XVIII, § 4(a) of the N.M.I. Constitution, to both houses of the Legislature on the day the petition is certified or ninety (90) days prior to the next regular general election, whichever is earlier. For Special Election Popular Constitutional Initiative Petitions, the Attorney General shall submit all petitions that he or she has certified as complying with Article XVIII, § 4(a) of the N.M.I. Constitution, to both houses of the Legislature on the day the petition is certified.

## ARTICLE VI. CERTIFICATION TO THE COMMONWEALTH ELECTION COMMISSION.

## Section 6-101. Attorney General's Certification to Commonwealth Election Commission Regarding Petitions Seeking To Amend The N.M.I. Constitution.

The Attorney General shall provide the Commonwealth Election Commission with a written certification regarding each petition to amend the N.M.I. Constitution it receives. This certification shall advise the Commonwealth Election Commission whether or not the petition has complied with the requirements of Article XVIII, § 4(a) of the N.M.I. Constitution. Except for Special Election Popular Constitutional Initiative Petitions, this certification shall be provided on the date it is issued or ninety (90) days prior to the next regular general election, whichever is earlier. For Special Election Popular Constitutional Initiative Petitions, the Attorney General shall submit all petitions that he or she has certified as complying with Article XVIII, § 4(a) of the N.M.I. Constitution, to the Commonwealth Election Commission on the day the petition is certified under Section 3-108.

# Section 6-102. Attorney General's Certification To Commonwealth Election Commission Regarding Petitions Seeking To Amend Commonwealth-wide Or Local Laws.

For an initiative or referendum petition regarding an amendment to a Commonwealth-wide or local law, the Attorney General shall provide the Commonwealth Election Commission with a written certification regarding each petition that is submitted to the Attorney General. This certification shall advise the Commonwealth Election Commission whether or not the petition has complied with the requirements of Article IX of the N.M.I. Constitution. The Attorney General shall notify the Commonwealth Election Commission on the day the certification is issued or ninety (90) days prior to the next regular general election, whichever is earlier.

## Section 6-103. Attorney General's Certification To Commonwealth Election Commission Regarding Recall Petitions.

The Attorney General shall provide the Commonwealth Election Commission with a written certification regarding each recall petition submitted to the Attorney General. This certification shall advise the Commonwealth Election Commission whether or not the petition has complied with the requirements of Article IX of the N.M.I. Constitution. Except for Special Election Recall Petitions, the Attorney General shall notify the Commonwealth Election Commission on the day the certification is issued or ninety (90) days prior to the next regular general election, whichever is earlier. For Special Election Recall Petitions, the Attorney General shall submit all petitions that he or she has certified as complying with Article IX of the N.M.I. Constitution, to the Commonwealth Election Commission on the day the petition is certified under Section 3-115.

## Section 6-104. Amendment Proposed.

A constitutional amendment petition shall be considered proposed, as that term is used in Article XVIII, § 5(a) of the N.M.I. Constitution, when the Attorney General certifies it.

## ARTICLE VII. DEADLINES.

## Section 7-101. Determination Deadlines.

If any deadline specified in these regulations falls on a Saturday, Sunday, Commonwealth holiday, or other non-work day, the date specified shall be the <u>immediately preceding</u> business day. For any filing under these regulations to be considered timely, it must be filed by 4:30 P.M. on the due date.

## Section 7-102. Calendar Days.

Unless the term "business days" is used, all references to "days" mean calendar days. "Business day" means any day that is not a Saturday, Sunday, Commonwealth holiday, or other non-work day.

## NOTICE AND CERTIFICATION OF ADOPTION OF AMENDED AND RESTATED IMMIGRATION REGULATIONS

I, Pamela Brown, the Attorney General of the Commonwealth of the Northern Mariana Islands, which is promulgating the amended and restated immigration regulations, published as proposed regulations in the Commonwealth Register Vol. 26, No. 12 on December 17, 2004, at pages 23699 to 23758; re-proposed with changes in the Commonwealth Register Vol. 27, No. 1 on January 17, 2005, at pages 23879 to 23889, by signature below hereby: (i) certify that, as published therein, and with such modifications as set forth herein, such regulations are a true, correct and complete copy of the Amended and Restated Immigration Regulations; (ii) direct that this Notice and Certification of Adoption be published in the February 2005 Commonwealth Register, said regulations to take effect ten days thereafter pursuant to 1 CMC §§ 9102 and 9105(b); and (iii) certify that, as of the effective date of the Amended and Restated Immigration Regulations promulgated herein, the Comprehensive Immigration Regulations initially adopted in the Commonwealth Register Vol. 7, No. 7, July 22, 1985, as subsequently amended, are hereby repealed in their entirety. For the sake of clarity, the Amended and Restated Immigration Regulations are republished herein, in their entirety, as amended.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the \_\_\_\_\_ day of February 2005.

PAMELA BROWN

CNMI ATTORNEY GENERAL

## SUMMARY OF MODIFICATIONS

Technical or stylistic changes that do not alter substance or meaning of the regulations are not addressed.

## **Sponsors For Visitor Entry Permits**

Proposed Regulations 703(D)(3) and (E)(1).

As proposed, Section 703(D)(3) treats non-resident workers serving as sponsors for Visitor Entry Permit differently from other potential sponsors, imposing additional burdens and limitations. This could be construed as unfairly selective, and therefore will not be adopted. However, there remains a need for an effective mechanism for holding sponsors accountable when the aliens they have sponsored become illegal. For this reason, the Attorney General adopts Immigration Regulation §703(D)(3), modified as follows:

- 3. An alien present in the Commonwealth pursuant to a permit issued under Immigration Regulation Section 706(K) may serve as sponsor for no more than two applicants for a Visitor Entry Permit at any given time, provided, however, that the sponsoring alien may sponsor additional visitors if he or she submits The Attorney General may require any alien, or the party sponsoring the alien, to submit satisfactory evidence that he or she is able to fulfill the obligations set forth in the affidavit required by Immigration Regulation Section 703(E)(1)(h). Such evidence may be in one of the following forms:
  - A cash bond in an amount not to exceed one thousand five hundred dollars a. (\$1,500), delivered to the CNMI Department of Treasury and returnable upon proof of the alien's timely departure;
  - b. Proof that the alien, or the party sponsoring the alien, is currently employed in a position which pays wages or salary exceeding twenty thousand dollars (\$20,000) per year; or
  - Proof that the party sponsoring the alien has maintained a minimum balance of c. three thousand dollars (\$3,000) in a Commonwealth bank account for a period of at least three months prior to the expected date of arrival of the visitor.

## **Electronic Manifests**

Proposed Regulation 703(C).

Upon discussion with the CNMI labor and immigration records unit, the Office of the Attorney General believes it necessary and practicable to require all flights into and out of the CNMI to provide electronic manifests of their passengers. For this reason, the Office of the Attorney General adopts Immigration Regulation  $\S703(C)$ , amended as follows:

- C. Carrier Responsibility.
  - The carrier at the point of embarkation shall not board an alien seeking to travel to the 1. CNMI for tourism or business purposes unless: (1) the individual presents a valid, unexpired Visitor Entry Permit; or (2) the individual satisfies one of the exempt categories set forth in Immigration Regulation 703(B) above.

- 2. For all flights or cruises originating from a port outside the Commonwealth authority of United States immigration, carriers shall provide to the Division of Immigration an electronic manifest listing the names, and nationalities names and citizenships of all passengers prior to arrival in the Commonwealth.
- For all flights or cruises departing from a Commonwealth port, carriers shall provide to the Division of Immigration an electronic manifest listing names and citizenships of all passengers after departure out of the Commonwealth.

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February 17, 2005

## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

## OFFICE OF THE ATTORNEY GENERAL-IMMIGRATION DIVISION

## IMMIGRATION REGULATIONS

#### I. **GENERAL**

Section 101. Purpose. These regulations shall replace those rules and regulations repealed by Section 29 of Public Law No. 3-105.

Section 102. Definitions. The words and phrases used in these regulations have the meanings ascribed to them in Section 3 of Public Law No. 3-105. As used herein, "inspector" shall include registrars, examiners, inspectors, and all officers of the Immigration Office.

#### II. APPOINTMENTS

Section 201. Immigration Officer. The Immigration Officer shall be appointed by a letter of appointment signed by the Attorney General delivered to the Immigration Officer and the Governor.

## Section 202. Inspector.

- A. Inspectors shall perform all the duties of the Office of Immigration under Public'Law Nos. 1-8 and 3-105.
- B. Inspectors shall be appointed by memoranda of the Immigration Officer with the written concurrence of the Attorney General. To become effective, the appointments must be followed by the execution of an oath of office.

## Section 203. Examiner.

- Examiners shall provide further examination of persons excluded at the borders by an inspector. An A. examiner shall have the powers and duties described in Sections 14-16 of Public Law 3-105 specifically and those of an inspector generally.
- В. Examiners shall be designated by memoranda of the Immigration Officer with notice to the Attorney General. Appointment to the position of examiner does not entitle the examiner to an increase in compensation and shall not be considered as a promotion or demotion. There shall be one examiner on duty with an inspector at each port of entry when clearing vessels.

## Section 204. Registrar.

- Registrars shall register aliens in accordance with Section 24 of Public Law No. 3-105 and the regulations A. issued thereunder.
- Registrars shall be inspectors designated as registrars by the Immigration Officer with notice to the B. Attorney General. Appointment to the position of registrar does not entitle the registrar to an increase in compensation and shall not be considered as a promotion or demotion.
- C. There shall at all times be at least two registrars in the island of Saipan and one registrar each in Rota and Tinian.

#### **COURSE OF INSPECTORS** III.

Section 301. Personnel Service System Rules and Regulations. The Personnel Service System Rules and Regulations, as finally adopted by the Civil Service Commission, shall apply to all inspectors. All amendments thereafter shall apply. In particular, the Code of Ethics, Part V(D), applies to every inspector. The Immigration Officer shall cause a copy of the Code of Ethics to be delivered to every inspector.

Section 302. Dress. No inspector shall report to duty unless dressed in full uniform. Full uniform consists of black shoes, dark socks, dark blue pants, black leather belt, light blue shirt, name tags and badge. Those items issued by the government cannot be substituted. In cold weather, the government-issued dark blue jackets shall be worn. Clothing shall be clean and ironed. Shoes shall be shined. The inspector must be clean-shaven and neat.

## Section 303. Punctuality.

- Α. An inspector shall arrive at his assigned station on time for his shifts in uniform and prepared to work. Failure to do so may result in suspension or termination. This is particularly important at the ports of entry where the commercial activities of the Commonwealth depend upon Immigration to promptly clear vessels and aircraft.
- If an inspector is unable to arrive on time or is unable to show up to work, he shall immediately notify his В. supervisor in advance. If his supervisor is unavailable, he shall notify the Deputy Director or the Immigration Officer. Failure to do so may result in suspension or termination.

## Section 304. Chain of Command.

- A. Requests or grievances shall be brought within the chain of command in order to provide for an orderly, non-partisan resolution of problems within the Office. An employee shall not pursue a grievance with a higher rank supervisory official until he has done so with a lesser rank official.
- B. The one exception to the rule is that informal grievances may be brought to the Personnel Officer in order to seek advice.

#### IV. REGISTRATION

Section 401. Purpose. These regulations shall provide for a system of annual registration as required by Section 24 of Public Law No. 3-105.

Section 402. Definitions. The words and phrases used in these regulations have the meanings ascribed to them in Section 3 of Public Law No. 3-105, except as may be set forth pursuant to administrative or executive order.

## Section 403. Registration.

- A. Any alien who intends to remain in the Commonwealth for more than ninety (90) days shall register with the Office of Immigration within ninety (90) days of their arrival, except as set forth pursuant to these regulations.
- B. Any alien who is issued a renewal of his or her employment or business permit shall register within ten (10) business days after the issuance of the renewal.
- C. Parents and legal guardians of alien children and wards are responsible for the registration of such children and wards that are under the age of 21.
- An employer shall ensure that any alien in his or her employ has registered in accordance with these D. regulations. An employer's responsibility under this section is in addition to and does not diminish the responsibility of an alien.

Section 404. Registered Alien Sticker.

- A. Aliens who file the required documents, pay the required fee, and who are legally present in the Commonwealth shall receive a Registered Alien Sticker.
- B. The Registered Alien Sticker shall be affixed on the reverse side of the immigration entry permit card.

<u>Section 405.</u> Registration Fee. No Registered Alien Sticker shall be issued until the alien has paid a twenty-five dollar (\$25.00) application processing fee to the Treasurer of the Commonwealth of the Northern Mariana Islands.

## Section 406. Application.

The alien must complete an Alien Registration Application and sign it under penalty of perjury before a registrar.

## Section 407. Examination.

Upon registration, the alien must appear before a registrar in the Office of Immigration.

## Section 408. Not Evidence of Legal Status.

The purpose of the Alien Registration Sticker is to provide evidence that the alien has complied with the alien registration requirements. The issuance of an Alien Registration Card is not an adjudicatory act determining the legality of an alien's status.

<u>Section 409. Immigration Processing.</u> The Immigration Officer shall cause the information received to be recorded on computer. In addition, a current file system shall be established with a file for each alien containing, at the minimum, the application forms and a photograph of the alien.

## V. PORTS OF ENTRY

Section 501. Purpose. The Attorney General shall designate Ports of Entry for arriving aliens under Section 26 of Public Law No. 301-5.

<u>Section 502.</u> Saipan and Northern Islands. There are hereby designated only two ports of entry for the island of Saipan and those islands of the Commonwealth north of Saipan:

- A. Saipan International Airport (at Aslito Field) for all carriers.
- B. Charlie Dock (Tanapag Harbor, Saipan) for ocean carriers.

Section 503. Tinian. There are hereby designated two ports of entry for the islands of Tinian and Aguigan:

- A. North Field Airport, Tinian for air carriers.
- B. Tinian Harbor for ocean carriers.

Section 504. Rota. There are hereby designated three ports of entry for the island of Rota:

- A. Rota International Airport for all carriers.
- B. West Dock (Sasanlago Harbor) for ocean carriers.
- C. East Dock (Sasanhaya Harbor) for ocean carriers.

Section 505. Exclusive Ports of Entry. The ports of entry designated in Sections 502, 503 and 504 are exclusive. Any person who unlawfully enters or attempts to enter the CNMI or any alien who enters or attempts to enter the CNMI at a place other than these ports of entry is guilty of a crime under Section 25(a) of Public Law No. 3-105. In

addition, any carrier, master, commanding officer, purser, person in charge, agent, owner or consignee of any vessel or aircraft who knowingly brings or attempts to bring or aid, abet or assist in bringing any person into the Commonwealth at other than these ports of entry may be punished by a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each occurrence.

## VI. VESSEL AND AIRCRAFT ENTRY

## Section 601. Permission to Enter

- A. Permission to Enter. No vessel or aircraft, unless military, shall enter the CNMI without first having received permission from the Immigration Officer. A vessel or aircraft master or pilot may file an Application For Vessel Or Aircraft To Enter The Northern Mariana Islands. Request for permission to enter shall contain the following information:
  - 1. Vessels:
    - a. Name of vessel;
    - b. Place of registry and registration number;
    - c. Name, nationality and address of operator;
    - d. Radio call sign;
    - e. Length, breadth and depth of vessel;
    - f. Gross tonnage;
    - g. Last port of call;
    - h. Date of last entry;
    - i. Purpose of entry;
    - j. Approximate duration of stay;
    - k. Port of next destination;
    - 1. Name and address of agent; and
    - m. Estimated time of arrival.
  - 2. Aircraft:
    - a. Type and serial number of aircraft;
    - b. Name, nationality and address of senior pilot;
    - c. Name, nationality and address of owner;
    - d. Plan of flight route;
    - e. Landing weight;
    - f. Date of last entry;

- g. Port of next destination;
- h. Name and address of agent;
- i. Purpose of entry; and
- i. Estimated time of arrival.
- B. Aircraft may obtain multiple entry permission upon submission of the type and serial number of the aircraft, the name, nationality and address of the owner, the purpose of entry, the name, address and phone number of the agent, and roster of all flight staff. This multiple entry permission shall remain in effect for one (1) year and is specifically conditioned on the local agent providing at least seven (7) days in advance to the Immigration Officer an estimated passenger forecast and the port of last call for the aircraft.
- C. Non-commercial pleasure vessels or aircraft may arrive at the ports of entry without prior permission to enter if:
  - 1. They immediately notify the port authority of their entry and their lack of permission to enter from the Immigration Officer,
  - 2. The total number of crew and passengers is less than ten (10) persons,
  - 3. The master or pilot immediately reports to port authority to request Immigration clearance,
  - 4. The master or pilot fills out the form entitled "Application for Vessel Or Aircraft To Enter The Northern Marianas," and
  - 5. No member of the crew leaves the vessel or aircraft until directed to do so by an Immigration Inspector.

Section 602. Emergency Entry. Upon request, the Immigration Officer may authorize the emergency entry of a vessel or aircraft to CNMI port of entry in the event of distress, weather, mechanical, or medical emergency. Postentry authorization may be granted where circumstances do not permit pre-entry authorization. No vessel or aircraft which has entered the CNMI port by reason of an emergency shall be permitted to depart the CNMI until a written report of the emergency incident, bearing the subscription of the master of such vessel or senior pilot of such aircraft, is filed with and evaluated by the Immigration Officer with the concurrence of the Attorney General. If the emergency is not verified by such report, the entry shall be considered as being unlawful. The period of stay authorized by an emergency entry shall be limited to the length of time until the emergency circumstances have been resolved. The owners, agents, crew, passenger and master of any such vessel or aircraft shall be liable for the costs of inspectors providing services at hours other than working hours in accordance with Section 605.

Section 603. List of Crew and Passengers. The master or pilot of every vessel or aircraft arriving in the CNMI from a port outside the CNMI shall furnish a list of the crew and passengers aboard before the commencement of inspection.

Section 604. Departure of Vessel or Aircraft. The privilege of a vessel or aircraft to enter the CNMI may be revoked or suspended at any time by the Immigration Officer. Grounds for revocation or suspension include violation of any section of these Regulations or violations of Section 22 of Public Law No. 3-105. An aircraft or vessel's privilege to enter shall be suspended if the aircraft or vessel abandons any of its crew in the CNMI. The period of suspension shall be at the discretion of the Immigration Officer.

## Section 605. Compensation for Services Rendered.

A. All air and sea carriers and other persons whose operations require the service of Immigration officers of the Commonwealth of the Northern Mariana Islands at other than established working hours shall pay the overtime costs for such officers providing said services.

- 1. "Other than established working hours" include work performed in excess of eight (8) hours on a weekday or forty (40) hours a week and the twenty-four (24) hour period for Saturday and the twenty-four (24) hour period for Sunday. The rate of compensation for overtime or for employees required to work during other than established working hours is one and one-half (1 ½) times the employee's basic pay. An employee required to work on a legal holiday shall be compensated at two (2) times the base salary rate. Overtime pay shall include overtime compensation as well as applicable employer contributions for retirement and Medicare.
- 2. -There shall be a minimum charge of two (2) hours overtime for each arrival requiring the services of Immigration officers. An employee who is required to work overtime of less than two (2) hours is credited with a minimum of two (2) hours overtime work. Any fraction of an hour in excess of the two (2) hour minimum shall be compensated at the full hour rate. Compensation for services shall commence thirty (30) minutes prior to the scheduled arrival time of a carrier. It shall terminate thirty (30) minutes after the officer's services are terminated at the post of duty.
- 3. Sea carriers, individuals, non-scheduled aircraft, and others for which overtime services can be specifically assigned shall be charged for the actual overtime incurred by the Immigration officer(s) providing such services.
- 4. Said overtime charges and holiday charges shall be waived when services are rendered to a carrier operating under emergency conditions or for emergency purposes.
- 5. For scheduled and extra section flights to Saipan, Tinian, or Rota, Immigration services provided during overtime hours shall be presumed to be performed for two or more airlines during one continuous tour of overtime duty. The total charge for these services shall be prorated to the aircraft arriving between 4:00 p.m. to 6:30 a.m. weekdays, and the twenty-four (24) hour period of a Saturday, Sunday or holiday. The total charge shall be assessed pursuant to Customs Service Regulation Section 1302.22(e)(1).
- 6. For purposes of this application, overtime charges of the Immigration Division will be included and billed using a standard rate that also includes the overtime charges of the Customs and Quarantine Division and assessed pursuant to Customs Service Regulation Section 1302.22(e)(1).
- 7. At the end of the fiscal year, the Director of Finance will compute actual costs in accordance with the percentage allocation formula set forth in Customs Service Regulation Section 1302.22(e)(1).
- B. Non-performance of Requested Service. If employees have reported to work in order to provide requested overtime services, but services are not performed by reason of circumstances beyond the control of the employees concerned, compensation shall be in accordance with paragraph (1) of this section.
- C. Notice of Rate Change. The Director of the Department of Finance pursuant to the authority granted the Director under 4 CMC §2553, may change the rate and basis for allocation used for billing overtime services upon ninety (90) days public notice.
- D. Interest Charge. Interest charge of fifteen percent (15%) per annum shall be imposed on all unpaid charges required by this part.

## Section 606. Clearance During Journey.

- Clearance services may be provided during the journey of a vessel or aircraft upon request. A.
- В. The charges shall be according to Immigration Regulation Section 605.
- C. All necessary transportation shall be furnished by the master, owner or agent. The master, owner, or agent shall provide to the inspector [a] per diem at the prevailing government rate or adequate hotel accommodations if the vessel departure is delayed and the inspector is required to wait for more than three (3) hours between 10:00 p.m. and 5:00 a.m. or for more than six (6) hours between 6:00 a.m. and 10:00 p.m. for the departure.
- D. During the voyage, accommodations provided [to] passengers must be provided to the inspector.

E. The master, owner or agent shall assume responsibility for necessary medical expenses incurred while away from the primary duty station in order to provide clearance during a journey.

## Section 607. Billing.

- Charges shall be billed monthly. A.
- B. Late payment shall be charged at fifteen percent (15%) per annum.
- C. All bills not paid within ninety (90) days shall be reported to the Attorney General for civil suit and to revoke a carrier's entry privilege.

## VII. ENTRY PERMIT

Section 701. Requirement. An alien may enter the CNMI only upon evidence of a valid entry permit (either a Visitor Entry Permit, Nonresident Worker Permit, or an Authorization For Entry) granted in advance of his arrival at the port of entry.

## Section 702. Exceptions by Waiver. Section 701 is waived for:

- Aliens traveling for purposes of tourism or business who are exempt pursuant to Immigration Regulation A. Section 703(B).
- B. Employees of the CNMI government and their immediate relatives exempt pursuant to Immigration Regulation Section 705.

## Section 703. Visitor Entry Permit.

- Applicability. A Visitor Entry Permit is required for entry by aliens who are seeking to enter the CNMI for A. tourism or business purposes. The term "tourism purposes" is defined as traveling for pleasure or recreation by an alien who has a residence in a foreign country which he has no intention of abandoning and who is visiting the Commonwealth of the Northern Mariana Islands temporarily for business, pleasure or recreation. Such visitors shall not include those visiting the Commonwealth for purposes of work, or for other purposes requiring an Authorization For Entry.
- В. Visitor Entry Permit Exemptions. The following aliens do not require a Visitor Entry Permit in order to enter the CNMI:
  - 1. Any alien with a valid United States entry visa which is valid for at least 60 days from the date of entry into the CNMI provided that the United States visa permits re-entry back into the United States after entry and departure from the CNMI.
  - 2. Any alien who is a national or citizen of a country that is permitted to enter the United States under the United States visa waiver program.
  - 3. Any alien who is a citizen, national, permanent resident, or holds a status as a temporary resident authorized to work in and unconditionally reenter a country that appears on the Commonwealth Visitor Entry Permit Exempt Countries List, which shall be issued from time to time by the Attorney General, and made available to members of the public at their reasonable request.
  - United States residents who present evidence of a valid, un-expired form I-551 issued by U.S. 4. Customs and Immigration Service (USCIS). The following shall be acceptable as providing evidence of such status:
    - Form I-551 Permanent Resident Card. a.
    - Form I-551 Alien Registration Receipt Card. b.

 A Lawful Permanent Resident may present a valid un-expired passport containing a valid un-expired temporary residence stamp. (Processed for I-551 Temporary Evidence of Lawful Admission).

## C. Carrier Responsibility

- 1. The carrier at the point of embarkation shall not board an alien seeking to travel to the CNMI for tourism or business purposes unless: (1) the individual presents a valid, un-expired Visitor Entry Permit; or (2) the individual satisfies one of the exempt categories set forth in Immigration Regulation Section 703(B) above.
- 2. For all flights or cruises originating from a port outside the Commonwealth, carriers shall provide to the Division of Immigration an electronic manifest listing the names, and citizenships of all passengers prior to arrival in the Commonwealth.
- 3. For all flights or cruises departing from a Commonwealth port, carriers shall provide to the Division of Immigration an electronic manifest listing names, and citizenship of all passengers after departure out of the Commonwealth.

## D. Limitations.

- 1. No alien may enter the CNMI by exiting their country of citizenship or point of origin with a Visitor Entry Permit as described under these regulations and then entering the CNMI with an Authorization for Entry or work entry permit issued under Section 706(K) of these regulations.
- 2. No alien is entitled to a Visitor Entry Permit by right. Citizens of countries not exempt from the Visitor Entry Permit requirement pursuant to Immigration Regulation 703(B) may enter only under the terms contained herein.
- 3. The Attorney General may require any alien, or the party sponsoring the alien, to submit satisfactory evidence that he or she is able to fulfill the obligations set forth in the affidavit required by Immigration Regulation Section 703(E)(1)(h). Such evidence may be in one of the following forms:
  - a. A cash bond in an amount not to exceed one thousand five hundred dollars (\$1,500), delivered to the CNMI Department of Treasury and returnable upon proof of the alien's timely departure;
  - b. Proof that the alien, or the party sponsoring the alien, is currently employed in a position which pays wages or salary exceeding twenty thousand dollars (\$20,000) per year; or
  - c. Proof that the party sponsoring the alien has maintained a minimum balance of three thousand dollars (\$3,000) in a Commonwealth bank account for a period of at least three months prior to the expected date of arrival of the visitor.

## E. Application for VEP.

- In order to obtain a Visitor Entry Permit, the applicant must submit an application via fax, e-mail, or posted mail to the CNMI Division of Immigration, Office of the Attorney General. The Visitor Entry Permit application shall be submitted under penalty of perjury and shall include the following information:
  - a. Name;
  - b. Certified copy of valid passport;

- Home address, telephone number, fax number, place of birth; c.
- d. Length of time at home address;
- Expected date and time of arrival; e.
- f. Expected date and time of departure;
- Name and address of sponsor/reference/hotel in the CNMI; g.
- h. Proof of financial responsibility by either:
  - (1) if the visitor is self-sponsored, satisfactory evidence that the visitor is capable of supporting themselves while in the Commonwealth (at least \$100 per day) and of purchasing a return air ticket; or
  - (2) if the visitor is sponsored by a party residing in the Commonwealth, an Affidavit of Support signed under penalty of perjury that at a minimum affirms that the sponsor: (i) has not been found in violation of prior sponsorships; (ii) has sufficient income or financial resources to support the visitor during their entire stay, including the ability to pay for food, lodging, medical and transportation costs; (iii) is willing to pay such costs should it become necessary; (iv) will reimburse the Government of the CNMI for all expenses incurred as a result of the visitor becoming a deportable alien pursuant to Commonwealth law and regulation, which costs may include (among other things) the expenses of detection, detention, prosecution and repatriation; and (v) will report to and assist the Division of Immigration should the visitor violate any condition of entry or other U.S. or Commonwealth immigration law or regulation.
- i. Copy of round trip ticket or e-ticket or verified itinerary;
- Indication whether applicant has visited CNMI previously; and į.
- k. Indication whether applicant has ever applied for and been denied entry or an entry permit.

Additional information may be required as needed.

- 2. The application shall be free of charge if submitted more than more than seven (7) days prior to the expected date of arrival. If the application is received less than seven (7) days prior to the expected date of arrival, the applicant must submit a non-returnable processing fee of one hundred dollars (\$100). Expedited processing fees must be received prior to issuance of a VEP.
- F. Finding of Deficiency.

Once the Division of Immigration receives an application for a Visitor Entry Permit, it will review the application to determine whether all of the information required has been provided. This deficiency review will be completed within seven working days after receipt of the application. If the application is found to be complete, it will be reviewed in accordance with the Standards For Review provided herein. If the application is found to be deficient, then the deficiencies shall be listed and forwarded to the applicant by the third day of the deficiency review period in the same manner as the application was received.

- G. Standards for Review.
  - 1. Once a Visitor Entry Permit application is determined to be complete, within seven working days it will be reviewed for substantive compliance and approved by the Attorney General, or her dulyappointed designee, based on the following requirements:

- valid passport for at least sixty (60) days after expected time of departure from the CNMI;
- copy of a round trip ticket or verified electronic itinerary (i.e., e-ticket); b.
- finding that person resides permanently in place of residence and is reliably expected to c. return there;
- d. finding that there is no reasonable cause to believe the visit is for purposes other than tourism or business:
- either (a) acceptable sponsorship and affidavit of support from a party residing in, or an entity located in, the Commonwealth who has not been found in violation of prior sponsorships; or (b) acceptable proof (such as a bank account statement, letter of credit, or proof of a valid credit card with an equivalent available credit) of means sufficient to support a stay for the duration of the trip (which shall be no less than \$100 per day; and
- f. determination and finding of accuracy in application.
- 2. A Visitor Entry Permit may be denied if the examining official has reasonable cause to believe that the individual is excludable pursuant to 3 CMC § 4322, or reasonable cause to believe that the individual's entry is not in the best interest of the Commonwealth.
- H. Issuance of Permit – Decision Within Seven Working Days.

Once a Visitor Entry Permit application is determined to be complete and all of the substantive Standards For Review are determined to be satisfied, then a Visitor Entry Permit will be granted within seven working days after the initial receipt of the application. If any of the standards are determined to be in noncompliance, the application shall be denied and the applicant shall be notified of the denial within two working days of the determination.

A copy of the approved Visitor Entry Permit shall be delivered to the applicant with a copy to the airline carrier in the CNMI. The airline carrier in the CNMI shall forward a copy of the Visitor Entry Permit to the point of embarkation to the CNMI. The airline carrier at the point of embarkation shall not board a Visitor Entry Permit holder if the holder's copy does not match the carrier's copy.

I. Duration of Visitor Entry Permit.

> Once the application is approved, it will be valid for a single entry and for thirty (30) days from the original date of entry to the CNMI. An alien may apply for an extension as permitted by law.

J. No Transfer of Permit.

> An alien with a valid Visitor Entry Permit may not work, and may not obtain or seek to obtain a work permit under Section 706(K) of these regulations during a visitor permit entry. An alien who violates this provision shall be subject to criminal prosecution and/or deportation pursuant to applicable statutes and regulations.

K. Admission.

> No alien may seek or obtain entry into the Commonwealth as a matter of right. Nothing in these regulations shall be construed to entitle any alien, to whom a Visitor Entry Permit has been issued, to enter the Commonwealth of the Northern Mariana Islands, if, upon arrival at a port of entry in the Commonwealth, he is found to be excludable under any provision of law. If entry is denied to a valid Visitor Entry Permit holder, the applicant may be temporarily admitted at the discretion of the Director of Immigration under such conditions as will ensure the visitor's availability for further proceedings,

including retaining the visitor's passport and return airline ticket. An alien so admitted shall be deemed not to have entered the Commonwealth. The exclusion or removal of a temporarily admitted alien shall not require deportation proceedings.

#### L. Approval of Travel Agencies.

Any travel agency, as that term is defined by the Secretary of Commerce, or similar organization seeking to arrange travel or process documents for persons requiring a VEP shall have satisfied the conditions set forth herein and shall have received prior written authorization from the Office of the Attorney General.

#### 1. Eligibility.

Only companies duly licensed and conducting business in the Commonwealth are eligible to apply for status as authorized agencies.

#### 2. Petition.

An eligible travel agency shall file a signed petition with the Office of the Attorney General, Division of Immigration. Such petition shall include: (1) a description of the travel agency, including the number of operational offices and estimated annual revenues, as well as the services it seeks to provide; (2) any associations or institutions with which the travel agency is affiliated; (3) the anticipated number of alien visitors per year; (4) the number of employees, both in the Commonwealth and in the location of departure, and their positions and qualifications; and (5) a description of the travel agency's procedures for conducting background and medical searches, and for returning alien visitors who fail to comply with the terms of entry.

#### 3. Interview of petitioner.

Petitioner may be required to appear in person, under oath, before the Attorney General or her duly appointed designee prior to approval. Petitioner may also request an interview.

#### 4. Approval of petition.

Subject to the bonding requirement described in paragraph (10) of this Section 703(L), the Attorney General may approve a petition upon a determination that the travel agency is capable of and intends to comply with Commonwealth laws and regulations and will, if necessary, take all reasonable measures to assist the DOI in performing its functions. The Attorney General shall notify the petitioner in writing whether the petition has been approved or denied. An approval may be revoked in accordance with the provisions of paragraph (8) of this Section 703(L), and is subject to annual review and renewal.

#### 5. Denial of petition and opportunity to cure.

If the petition is denied, the petitioner shall be notified of the reasons thereof and of the right to cure any deficiency in the petition within fifteen (15) days after service of the written denial. Should the petitioner fail to satisfactorily cure the deficiency within the prescribed cure period, the petitioner shall be ineligible to reapply for a period of sixty (60) days after expiration of such cure period.

#### Recordkeeping requirements. 6.

An approved travel agency must keep records of the names, date and place of birth, country of citizenship, address and telephone number, and a photocopy of the passport and entry permit for each alien visitor. Such records shall be readily available to the DOI and shall be retained for a period of two years following the departure of the alien visitor.

#### 7. Reporting requirements.

Approved travel agencies are required to immediately report to the DOI the following:

- a. An alien visitor is arrested or detained for any reason;
- c. An alien visitor fails to depart the Commonwealth as scheduled;
- c. An alien visitor requires hospitalization due to illness or injury; or
- d. Any event, whether in the Commonwealth or in the country of origin, that could potentially prevent the scheduled repatriation of the alien visitor.

## 8. Revocation of approved status.

a. Revocation on notice.

The approval may be revoked on notice by the Attorney General for a failure to comply with Commonwealth law and regulation or for any valid and substantive reason. If a travel agency's approval is revoked on notice pursuant to this paragraph, the travel agency shall be ineligible to reapply for a period of one year after the effective date of the revocation.

b. Automatic revocation.

If an approved travel agency terminates its operations or experiences a change in ownership that results in a change of control, approval will be automatically revoked as of the effective date of such events.

## 9. Revocation proceeding.

Should the DOI believe that a travel agency is no longer entitled to approval, the DOI shall serve notice of intent to revoke the approval. Such notice shall describe the grounds for revocation and shall inform the travel agency that it may, within fifteen (15) days of the date of service of the notice, file an appeal to the Attorney General. A statement setting forth the grounds for contesting the revocation of the approval shall support such appeal. The Attorney General shall promptly issue a written decision either revoking approval or granting continued approval, including a discussion of the evidence and findings. The Attorney General may rely solely on the record, or may supplement the record with new evidence. The decision of the Attorney General shall constitute a final agency decision for purposes of judicial review.

## 10. Bonding Requirement.

- a. Once a travel agency has received a written approval from the Attorney General but prior to making travel arrangements for any alien visitor, the travel agency shall deliver to the DOI a bond from a domestic insurance company licensed to conduct business in the CNMI and certified by the Insurance Commissioner to be in full compliance with all financial and security reserve requirements and in a form acceptable to the DOI to secure the faithful performance of the duties and responsibilities of the travel agency, to ensure the departure of all alien visitors as scheduled and prior to expiration of the alien visitor's tourist permit, and to indemnify the Commonwealth for reasonable costs incurred as a result of the travel agent's negligence or failure to comply with these regulations.
- b. If the travel agency fails to repatriate an alien visitor, thereby allowing that alien visitor to become an illegal alien, then all costs of deportation shall be paid by the travel agency or deducted from the bond, subject to the provisions of the Administrative Procedure Act 1 CMC § 9101 et seq.. All such payments or deductions shall be made to the Alien Deportation Fund.
- c. The amount of the bond shall be determined and maintained at: (i) at least two thousand dollars (\$2,000) per alien visitor if the expected number of alien visitors in the next fiscal quarter is less than 200; (ii) at least five hundred thousand dollars (\$500,000) if the

expected number of alien visitors in the next fiscal quarter is 200 or more but less than 500; (iii) at least seven hundred and fifty thousand dollars (\$750,000) if the expected number of alien visitors in the next fiscal quarter is 500 or more but less than 1,000; and (iv) at least one million dollars (\$1,000,000) if the expected number of alien visitors in the next fiscal quarter is 1,000 or more.

## Section 704. Short-Term Business Entry Permit.

- A. The Short-Term Business Entry Permit may be obtained only upon arrival at the port of entry subject to an arrival interview conducted at the port of entry by a designated immigration inspector.
- B. The Short-Term Business Entry Permit is for the purpose of conducting negotiations, formulating business plans, surveying business prospects and engaging in any lawful business or commercial activities. The holder of a Short-Term Business Entry Permit may not become employed by a Commonwealth employer.
- C. The Short-Term Business Entry Permit allows the holder to stay in the Commonwealth for one visit of not more than thirty (30) days.
- D. The Short-Term Business Entry Permit shall not be granted within thirty (30) days of the expiration of stay allowed in the entrant's previous Short-Term Business Entry Permit.
- E. No extension of the Short-Term Business Entry Permit may be granted. The stay allowed can be lengthened only upon the grant of a Regular-Term Business Entry Permit.
- F. Application for a Regular-Term Business Entry Permit must be made at least ten (10) days in advance of the expiration of the Short-Term Business Entry Permit.

## Section 705. CNMI Employees.

- A. CNMI alien employees and immediate relatives may enter for twenty (20) days without an entry permit if they possess a valid passport and a valid CNMI government travel order that specifies the immediate relatives to accompany the employee.
- B. It is specifically a condition of such entry that applications for CNMI employee entry permits shall be filed within ten (10) days of the arrival.
- C. Should employment terminate for any reason during the twenty (20) day period, the alien and the supervisor must report this fact to the Immigration Officer within twenty-four (24) hours.

## Section 706. Classification of Entry Permits.

- A. Regular-Term Business Entry Permit allows the holder to stay in the CNMI for one visit of not more than a ninety (90) day stay or multiple visits totaling not more than ninety (90) days within one twelve (12) month period. The applicant must be present in the CNMI to apply for the permit.
  - 1. The Regular Term Business Entry Permit allows the holder to engage in any lawful business or commercial activity in the Commonwealth only after certification of such activity by the Secretary of Commerce.
  - 2. The holder of a Regular-Term Business Entry Permit shall not become employed by a Commonwealth employer, other than by such an employer in which the holder maintains a substantial ownership interest.
- B. CNMI Employee Entry Permit permits alien to remain in the CNMI for one year so long as the alien is employed by the CNMI government. Alien may not enter into any other employment agreements while in the CNMI other than with the government. If the employee continues employment beyond the entry permit, then the permit may be renewed.

- C. Long-Term Tourist Entry Permit permits alien to remain in the CNMI for up to sixty (60) days. No Long-Term Tourist Entry Permit shall be granted within thirty (30) days of the expiration of any previous tourist entry permit, except that one Long-Term Tourist Entry Permit may be issued as an extension to a Short-Term Tourist Entry Permit or to a Comity Entry Permit. Alien shall not conduct business or perform services during stay. The Division of Immigration may impose a reasonable fee for processing and/or issuing a Long-Term Tourist Entry Permit. A Long-Term Tourist Entry Permit will be granted only upon a determination that it is in the best interests of the Commonwealth.
- D. Immediate Relative of Non-alien Entry Permit permits immediate relatives of persons who are not aliens to remain in the CNMI for one year so long as the immediate relative status is in effect, and permits aliens who have filed a Petition for Adoption with the Commonwealth Superior Court before the alien's eighteenth birthday to remain in the Commonwealth for a period of up to one year, as may be necessary to satisfy the requirements for adoption. The permit may be renewed at the discretion of the Director of Immigration.
- E. Immediate Relative of Alien Entry Permit an immediate relative of an alien may enter under a permit for the same term as the alien's entry if, in addition to satisfying such other requirements as may be imposed by law or regulations, the alien posts cash as a bond with the Director of Immigration in the amount of twice the cost of return travel to the point of origin at the time of application. An alien may not obtain a permit under this section solely by virtue of his or her relationship to an alien who holds an Immediate Relative of a Non-Alien Entry Permit issued pursuant to Immigration Regulation 706(D).
- F. Diplomat or Consular Entry Permit permits designated principal resident representing a foreign government which government is recognized in law by the United States and his immediate relatives to remain in the CNMI for the duration of his appointment. The Diplomat or Consular Entry Permit also permits officially designated staff members and their immediate relatives to remain for the term of their appointment. There shall be no fee for this permit.
- G. Foreign Investor Visa an alien granted a certificate of foreign investment by the Department of Commerce and Labor and has complied with Part IX of these regulations.
- H. Foreign Student Entry Permits
  - 1. Student Eligibility
    - a. For the purposes of this section "approved institution" shall refer to institutions approved pursuant to Immigration Regulation Section 706(H)(5). "Full-time" under this subsection is defined as a degree program of study of at least twelve (12) credit hours per semester or, for a training program, at least twelve (12) hours of active participation in course work or training per week.
    - b. In order to qualify for entry into the CNMI under this subsection, an applicant must be admitted to matriculate full-time in an approved institution.
    - c. Applicants may apply for a Foreign Student Entry Permit prior to formal enrollment with an approved institution, but the permit will not be issued until proof of enrollment is received and verified by the Office of the Attorney General, Division of Immigration (DOI). Upon receipt and preliminary approval by the DOI of a Foreign Student Entry Permit application and supporting materials (see Sections 3 and 4, below), the DOI will issue a "Student Authorization For Entry" that will allow the individual to travel to and enter the CNMI temporarily, in order to enroll in their approved institution and obtain a permit.

- d. Permission to remain in the CNMI, as granted by this subsection, shall expire upon completion of a degree or certificate program or school or training program or upon notification by the institution to the DOI that the student is no longer a full-time active student.
- e. A permit issued pursuant to this subsection shall be valid for no more than one year and is renewable if the applicant continues to meet all conditions of the original issuance. In any case, the duration of a Foreign Student Entry Permit shall not exceed the length of the degree or training program plus reasonable time necessary for repatriation. All applicants must comply with paragraphs 3 and 4 of this section.
- f. Dependents (which includes only children, under the age of eighteen, and spouses) of a holder of a Foreign Student Entry Permit issued pursuant to this subsection may be granted "Immediate Relative of Alien" entry permits pursuant to Immigration Regulation 706(E); provided, however, that in addition to the requirements of that Regulation, the applicant must also submit proof that sufficient funds are or will be available from an identified and reliable source to defray all living expenses during the period of the applicant's Foreign Student Entry Permit. Provided, further, that in addition to the repatriation bond required by Immigration Regulation 706(E), the applicant also must secure a three thousand dollar (\$3,000) bond for each dependent for health care services or provide proof of valid medical insurance coverage. An Immediate Relative of an Alien entry permit issued pursuant to this subsection shall only be valid for the same term as the Foreign Student Entry Permit.

## 2. Employment-

Except for students participating in an on-campus work/study program intended to defray the cost of tuition and /or living expenses, nothing in this section shall authorize the holder of a Foreign Student Entry Permit to work in the Commonwealth.

3. Proof of economic condition.

Applicants must prove that sufficient funds are or will be available from an identified and reliable financial source to defray all living and school expenses during the period of anticipated study. Specifically, applicants must prove that they have enough readily available funds to meet all expenses for the period of study including proof of adequate financial capability to defray all health care costs.

4. Application Requirements.

Each applicant for a Foreign Student Entry Permit shall pay a non-refundable application fee of one hundred dollars (\$100.00) and submit:

- a. A permit application, signed under penalty of perjury;
- b. a completed biographical form;
- c. certified copy of an applicant's passport;
- d. certified copy of a police clearance reflecting an applicants criminal record over at least a ten-year period; and

## 5. Approval of Institutions.

Prior to issuance of any Student Authorization For Entry or Foreign Student Entry Permit, the DOI must approve in writing the school in which a foreign student intends to enroll pursuant to the regulations set forth in this Section 706(H)(5). Such regulations shall only affect a school's ability

to accept students who are in the Commonwealth or seeking to enter the Commonwealth under a Foreign Student Entry Permit and shall in no way affect or impinge upon the school's accreditation by the Board of Regents or other accreditations, or the school's operation except as it relates to students who are aliens.

## a. Eligibility.

- (1) Eligible schools include, but are not limited to, post-secondary institutions, such as colleges, universities, community colleges or junior colleges, offering recognized associate, bachelor's, master's, doctor's or professional degrees, as well as "transitional schools" (as that term is defined in paragraph (2) of this Section), language schools, religious schools, vocational schools, sports schools and professional training programs. Home schools and traditional primary and secondary schools are not eligible.
- (2) A "transitional school", meaning a school which specializes in preparing for entry into post-secondary institutions in the Commonwealth or the United States those foreign students who: (i) have successfully completed the full course of publicly-offered secondary education in their home country; and (ii) are at least fourteen (14) years of age as of the date of enrollment but who may not have reached the age of eighteen (18), shall be eligible provided that it shall have satisfied any additional requirements under this Section 706(H), and shall have assumed legal guardianship for each foreign student who has not achieved the age of eighteen (18) and who does not otherwise have a legal guardian in the Commonwealth, while the foreign student is in the Commonwealth.

### b. Petition.

An eligible school seeking approval as a bona fide school eligible for attendance by foreign students, shall file a petition with the DOI. Such petition shall include:

- (1) A letter of intent and request for certification from an authorized representative of the school that describes the basic program, including curriculum, for which certification is requested. The letter shall also include: (i) the number of years the school has existed and operated; (ii) any established affiliation (including student exchange programs) with any other institutions inside or outside the CNMI; (iii) current number of students; (iv) number of foreign students requested and anticipated in the first two years after approval; (v) number of current faculty members (administrators and those holding teaching positions); (vi) number of faculty members anticipated in the first two years after approval (administrators and those to hold teaching positions); and (vii) anticipated or estimated sum total of tuition to be charged to each foreign student for the complete course of study, including any potential scholarships, or tuition waiver programs.
- (2) For a school or training program licensed by the Board of Regents of the CNMI under 2 CMC §1316(k), a certification to that effect signed by a member of the Board of Regents who shall also certify that he or she is authorized to do so. The school shall attach as an exhibit to the certification a copy of its submission to, and any findings of, the Board of Regents.
- (3) For any other petitioning school or training program: (i) a certification that the school is licensed, approved, or accredited by a recognized authority, signed by an official of such authority who shall also certify that he or she is authorized to do so; (ii) evidence that it confers upon its graduates recognized associate, bachelor, master, doctor, professional, or divinity degrees, or evidence that its credits have been and are accepted by at least three institutions that do confer

such degrees; and (iii) a school catalogue, if one is issued, including a printout of any web pages operated by the school that advertise or explain its program. If a catalogue is not issued, or if not included in the catalogue, the school shall furnish a blank application for student admission, in addition to a written statement describing the size of its physical plant, nature of its facilities for study and training, qualifications and salaries of the faculty (administrators and those holding teaching positions), attendance and scholastic grading policy, and finances (including a certified copy of the accountant's last statement of school's net worth, income, and expenses). A charter, authorization to do business, or instrument of incorporation shall not be considered a license, approval, or accreditation.

(4) Transitional schools shall submit an additional certificate, signed by a designated official, as that term is defined in paragraph 5(k) of this Section, stating that prior to the foreign student's arrival in the Commonwealth, the school: (1) has assumed (or will have assumed) legal guardianship for each foreign student who has not achieved the age of eighteen while they reside in the CNMI or that the foreign student has a legal guardian already in the Commonwealth; and (2) can provide adequate room and board, and full-time adult supervision.

## c. Interview of petitioner.

An authorized representative of the petitioner may be required to appear in person, under oath, before the DOI prior to the adjudication of the petition concerning the eligibility of the school for approval.

## d. Approval of petition.

To be eligible for approval, the petitioner must establish that: (i) it is a bona fide school; (ii) it possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses and to provide such other services as are described in the petition; and (iii) it is, in fact, engaged in instruction in those courses and providing such amenities. Upon approval, the DOI shall notify the petitioner in writing. Initial approval for a six (6) month period may, at the discretion of the Attorney General, be granted on a conditional basis and is renewable for an additional six-month period provided that the Attorney General is satisfied that the school has complied with the terms of this Section. An approved school must report immediately to the DOI any material modification to its name, address, or curriculum for a determination of continued eligibility for approval. The approval is valid only for the type of program and students specified in the approval notice. The approval may be revoked in accordance with the provisions of paragraph 5(1) of this Section, and is subject to annual review.

### e. Denial of petition and appeal.

If the petition is denied, the petitioner shall be notified of the reasons therefore and of the right to appeal. Any appeal shall be taken within fifteen (15) days after service of the written denial. The reasons for the appeal shall be stated in the notice of appeal, and supported by a statement setting forth the grounds for contesting the revocation of the approval.

## f. Recordkeeping requirements.

An approved school must keep records containing certain information and documents relating to each foreign student while the student is attending the school. Such records shall be readily available to the DOI and shall be retained by the school for a period of

two years following the departure of the student. The information and documents that the school must keep on each student are as follows:

- (1) Name;
- (2) Date and place of birth;
- (3) Country of citizenship;
- (4) Current address, or an accurate description of where the student and his or her dependents physically reside, and their mailing address;
- (5) The student's current academic status;
- (6) Date of commencement of studies;
- (7) Degree program and field of study;
- (8) Termination date and reason, if known;
- (9) The number of credits completed each semester;
- (10) A photocopy of the student's Passport and Foreign Student Entry Permit; and
- (11) For a transitional school, an original or certified copy of the document whereby the school or a legal guardian already present in the Commonwealth has assumed legal guardianship of each student who has not achieved the age of eighteen (18).

# g. Reporting requirements.

Once every term or session, the DOI shall send each approved school a list of all foreign students who are attending that school. A designated official must certify whether or not each student on the list is a full time student, and give the names and current addresses of all foreign students attending the school that are not listed and other information specified by the DOI. The designated official must comply with the request, sign and return the list to the DOI within thirty (30) days of the date of the request.

# h. Additional Reporting requirements.

Schools are required to report to the DOI, within fourteen (14) days of occurrence, the following events:

- (1) A foreign student fails to enroll or register for classes following the respective deadlines for enrollment or registration;
- (2) A foreign student fails to complete his or her program in the time typically required to complete such program;
- (3) A change of the student's or dependent's legal name, mailing address or location of residence;
- (4) A student graduates prior to the program end date;
- (5) Any disciplinary action taken by the school against a student as a result of the student being convicted of a crime;
- (6) Any other request made by the DOI with respect to the academic, legal or immigration status of the student; and

(7) For a transitional school, a student who turns eighteen (18) years of age and for whom the school no longer serves legal guardian.

# i. Advertising.

A school must send to the DOI a copy of any advertisement, catalogue, brochure, pamphlet, literature, or other material hereafter printed, reprinted or published, including via the internet, by or for an approved school containing any statement concerning attendance by foreign students. Such copies must be received by the DOI prior to distribution.

j. Issuance of Foreign Student Entry Permit.

A designated official of a school approved under this Section must sign any completed Foreign Student Entry Permit application issued for either a prospective or continuing student. The designated official shall sign the Foreign Student Entry Permit application only if the following conditions are met:

- (1) The prospective student has made a written application to the school.
- (2) The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student and dependents, and other supporting documents have been received, evaluated and deemed satisfactory by the school.
- The appropriate school authority has determined that the prospective student has satisfied the requirements set forth in paragraphs 3 and 4 of this subsection.
- (4) The official responsible for admission at the school has accepted the prospective student for enrollment in a full course of study.

# k. Designated official.

"Designated official" means a member of the school administration designated by the president, owner, or head of the school and approved by the DOI, who does not receive commissions for recruitment of foreign students. A designated official may not delegate this designation to any other person. Each school may designate up to three designated officials. Each designated official must sign a certificate stating that the official is familiar with the regulations relating to the requirements for admission and maintenance of status of foreign students and to school approval under this Section, and affirming the official's intent to comply with these regulations.

- 1. Revocation of approved status.
  - (1) Revocation on notice.

If a school's approval is revoked on notice pursuant to this paragraph, the school is not eligible to file another petition for approval until one year after the effective date of the revocation. The approval of a petition by a school for the attendance of foreign students may be revoked on notice by the DOI in its discretion for any valid and substantive reason including, but not limited to, the following:

(i) Failure to immediately notify the DOI if a student falls below full-time status or has more than three consecutive days of unexcused absences;

- (ii) Failure to comply with the reporting requirements set forth in paragraphs 5(d), 5(g) and 5(h) of this subsection;
- (iii) Failure to comply with the recordkeeping requirements set forth in paragraph 5(f) of this subsection;
- (iv) Willful issuance by a designated official of a false statement or certification in connection with an application for approval or other document related to the acceptance for enrollment of a foreign student;
- (v) A designated official does not meet or comply with the requirements set forth is paragraph 5(k) of this subsection;
- (vi) Signing of a Foreign Student Entry Permit application for a foreign student without receipt of proof that the student has met the requirements set forth in paragraphs 1(a), 1(c), and 1(e), or 2(a), 2(c), and 2(e), as appropriate, as well as subsections 3 and 4 of this Section;
- (vii) Failure to employ qualified professional personnel, to maintain proper facilities and curriculum, or to maintain such accreditation or licensing as represented in the petition;
- (viii) Failure to provide the DOI with the materials as prescribed in paragraph 5(i) of this Section or if the Attorney General finds that such materials contain materially false or misleading statements;
- (ix) For a transitional school, failure to assume legal guardianship for foreign students under the age of eighteen who do not have legal guardians already in the Commonwealth, or failure to provide adequate facilities and supervision appropriate to such student's age level; and
- (x) Any conduct on the part of a school or designated official that does not comply with the regulations set forth herein.

# (2) Automatic revocation.

If an approved school terminates its operations, approval will be automatically revoked as of the date of termination of the operations. If an approved school experiences a change in ownership that results in a change of control of the school, approval will be automatically revoked thirty (30) days from the date of change of ownership unless the school files a new petition for school approval. If, upon completion of the review, the DOI finds that the approval should not be continued, the DOI shall institute revocation proceedings in accordance with sub-paragraph 5(l)(3) of this Section.

# (3) Revocation proceeding.

(i) Should the DOI believe that an approved school is no longer entitled to approval, a proceeding shall be commenced by service upon the school's designated official a notice of intent to revoke the approval. Such notice shall describe the grounds upon which the withdrawal is based and shall also inform the school that it may, within (30) days of the date of service of the notice, submit a written answer setting forth reasons why the approval should not be revoked and that the school may, at the time of filing the answer, request an interview before the DOI in support of the written answer.

- (ii) If the school admits all of the allegations, or if the school fails to file an answer within the thirty (30) day period, the DOI shall revoke the approval and shall notify the designated official. If the school admits to the allegations or fails to file an answer within the thirty (30) day period, it shall have waived its right to appeal.
- (iii) If the school denies the allegations, then the school shall, in its answer, provide all information, including all documentary evidence, which shall be included in the record, on which the answer is based.
- (iv) Should the school request an interview; the school shall be given notice of the date set for the interview. In the discretion of the DOI, the interview may be recorded.
- (v) The DOI shall promptly issue a written decision either revoking approval or granting continued approval, including a discussion of the evidence and findings. The written decision shall be served upon the school or school system, together with the notice of the right to appeal.
- (vi) Any appeal of a revocation by the DOI shall be taken within fifteen (15) days after the service of the written decision. The reasons for the appeal shall be stated in the notice of appeal, and supported by a statement setting forth the grounds for contesting the revocation of the approval.
- (4) Institutional Certification Appeals.

Whenever a school is authorized to appeal a decision denying or revoking approved status, such appeal shall be taken by filing the required notice of appeal with the Office of the Attorney General. The Attorney General at his discretion may rely solely on the record, or may supplement the record with new evidence. The Attorney General shall confirm or modify the DOI decision in writing within thirty (30) days. The decision of the Attorney General shall constitute a final agency decision for purposes of judicial review.

- I. Foreign Press Entry Permit - An alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the Commonwealth solely to engage in such vocation, and the spouse and children of such representative which have joined him may remain in the CNMI for six (6) months. The permit is renewable.
- J. Distinguished Merit Entry Permit - An alien who has a resident in a foreign country, which he does not intend to abandon who is of distinguished merit and ability, and who is coming temporarily to the CNMI to perform temporary service of an exceptional nature requiring such merit and ability may remain for up to one year. This permit is renewable indefinitely. Aliens performing services on a contract basis either directly or indirectly for the Federal Government and who otherwise satisfy the requirements of this section may be granted a Distinguished Merit Entry Permit upon request by the contracting agency or employer.
- K. Nonresident Worker Entry Permit - An alien who is coming temporarily to the CNMI to perform temporary service or labor who has been certified as an eligible nonresident worker by the Department of Labor may be granted an entry permit in accordance with Public Law No. 3-66.
- L. Minister of Religion Permit – permits an alien who, for at least two continuous years before seeking admission, has engaged as a minister of religion, and who seeks to enter the CNMI solely for the purpose of engaging in that occupation, provided his or her services are needed by a denomination having a bona fide organization in the CNMI.

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- M. Religious Missionary – permits an alien who is a bona fide missionary of a religion who seeks to enter the CNMI solely for the purpose of engaging in missionary work provided his or her services are needed by a denomination having a bona fide organization in the CNMI to enter.
- Long Term Business Entry Permit allows the holder to enter and exit the CNMI for two years. The N. permit shall have no effect other than for the purpose of allowing the holder to reside in the CNMI as long as the Commerce Certificate for which the permit is issued is valid.
  - 1. The initial term of the Long Term Business Entry Permit shall be for a period of two years.
  - The Director of Immigration may only issue a long term Business Entry Permit to an alien whose 2. business activity has been approved and certified by the Secretary of Commerce, and who is not an excludable alien.
  - 3. The immediate relatives of the holder may be issued an Immediate Relative Permit for the same duration as the holder, provided that such persons are not excludable aliens.
  - 4. The holder has no absolute right to the renewal of his/her Long Term Business Entry Permit.
  - 5. The immigration privileges of the holder shall be revoked upon written notification by the Secretary of Commerce to the Director of Immigration of the revocation of the holder's Commerce Certificate.
- O. Retiree Investor Entry Permit – allows the holder and his or her spouse to stay in the Commonwealth for up to five (5) years, during which time the Alien may exit and re-enter the Commonwealth at any time.
  - In order to be eligible, an Alien applicant must:
    - be at least fifty-five (55) years old;
    - b. satisfy all CNMI health requirements;
    - not have been convicted of a felony in the Commonwealth or convicted of a crime outside the Commonwealth that would be considered a felony within the Commonwealth;
    - d. have invested a minimum of \$150,000 in a single residential property in the Commonwealth.
  - 2. Alien applicants must provide:
    - a. Proof of property interest and the value of the property underlying the residence;
    - b. Proof of the value of the improvements on the property;
    - Any other evidence supporting proof of investment; C.
    - Police clearance from the Alien's and his or her spouse's previous residences in the d. previous twenty (20) years;
    - Proof of health certificate: e.
    - f. Original birth certificate (or equivalent document) as proof of age;
    - Declaration of the Alien sworn under penalty of perjury that the Alien is not employed in the Commonwealth and does not own 10% or more of a business located in the Commonwealth;
    - h. Proof of health insurance with a minimum aggregate coverage of \$100,000; and

- i. A non-refundable application fee of \$1,000 for a single applicant and \$1,500 for an applicant and his or her spouse.
- P. Temporary Work Authorization Permit permits an alien who has received a Special Circumstances Temporary Work Authorization from the Department of Labor or been granted refugee protection pursuant to P.L. 13-61 to legally remain in the Commonwealth while such authorization is in effect and for a period of fifteen (15) days following the expiration, revocation, or termination of such Special Circumstances Temporary Work Authorization.
- Q. Comity Entry Permit permits citizens of a country, which the Attorney General determines provides a comparable permit to citizens of the Commonwealth, to remain in the CNMI for a period of up to ninety (90) days. The Attorney General shall publish a list of countries for which Comity Entry Permits may be issued; such list shall be promptly published in the Commonwealth Register.
  - 1. No application fee or other charge shall be required for issuance of a Comity Entry Permit.
  - 2. Aliens present in the Commonwealth pursuant to a Comity Entry Permit may freely depart and return to the Commonwealth during the ninety (90) day period.
  - 3. Applicants for a Comity Entry Permit must be at least fifty-five (55) years old on the date of arrival in the Commonwealth. Immediate family members of an applicant at least fifty-five (55) years old on the date of arrival in the Commonwealth are eligible to apply for Comity Entry Permits, such permits to expire simultaneously with that of the age-eligible applicant.
  - 4. A Comity Entry Permit may not be issued within thirty (30) days of the expiration of any other permit, nor may a Comity Entry Permit be extended or renewed, except that one Long-Term Tourist Entry Permit may be issued as an extension of a Comity Entry Permit pursuant to Immigration Regulation § 706(C).
  - 5. Aliens present in the Commonwealth pursuant to a Comity Entry Permit cannot conduct business or perform services during their stay; such activities constitute grounds for immediate revocation.

# R. Alien Student Attendance Permit -.

- 1. Enables an alien minor under the age of fourteen (14), who is the child of an alien parent (or parents) residing legally in the Commonwealth, to remain in the Commonwealth while enrolled in and attending a Commonwealth educational institution provided the following:
  - a. The alien parent or parents are in the Commonwealth pursuant to a Short-Term Business Entry Permit, Regular-Term Business Entry Permit, Immediate Relative of a Nonalien Entry Permit, Foreign Press Entry Permit, Distinguished Merit Entry Permit, Minister of Religion Permit, Religious Missionary permit, or Retiree Investor Entry Permit;
  - b. The alien parent or parents post twenty thousand dollars (\$20,000) as a cash bond with the Commonwealth Treasury or provide a letter of credit in the same amount from a financial institution agreeable to the Attorney General; the Attorney General shall have the right to reimbursement from the aforementioned funds for any expense incurred by the Commonwealth as a result of the presence of the minor alien, and the entire amount shall be forfeited should the Attorney General determine that the alien minor or an alien parent has knowingly violated any term or condition described herein, or has committed a material violation of any Commonwealth immigration law or regulation;
  - c. The alien parent has submitted a sworn affidavit, satisfactory to the Attorney General, detailing the living arrangements for the alien minor and explaining how all costs of living, potential medical costs, as well as tuition and related educational expenses, will be met;

- d. The alien minor is enrolled full time in an established private educational institution, which has been approved by the Attorney General as being qualified to enroll students holding permits under this section 706(R) and has been approved as tax exempt by the Commonwealth Division of Revenue Taxation pursuant to 4 CMC §1205(c)(3), and the principal or president of the school has:
  - (1) submitted a sworn affidavit that he or she will: (i) comply with all applicable Commonwealth immigration laws and regulations; (ii) report any violations of applicable Commonwealth immigration laws and regulations by the alien minor or the alien parent (or parents); (iii) fully cooperate with the Office of the Attorney General in ensuring the alien minor and the alien parent (or parents) are complying with applicable Commonwealth immigration laws and regulations, including providing records of the alien minor which may have bearing on his or her immigration status; (iv) notify the Division of Immigration should the alien minor have three consecutive unexcused absences; (v) acknowledge that a failure to do any of the above will result in an immediate and permanent revocation of any accreditation or qualification of the school under this or any other Commonwealth immigration law or regulation; and
  - (2) verified to the Attorney General that all tuition and fees for the upcoming school year have been paid by the alien minor in full, in advance.

### 2. Term of Permit-

- a. An Alien Student Attendance Permit shall be valid while the student is enrolled in and attending the educational institution, and for a period of fourteen (14) days before the commencement of classes and fourteen (14) days after the conclusion of classes during a normal school term. The Alien Student Attendance Permit must be renewed prior to the beginning of each school term.
- b. Should the attending school have its qualification revoked for a violation of the enumerated requirements under section 706(R)(1)(d)(1) above, the alien minor shall have a period of fourteen (14) days in which time he or she must transfer to another qualified school or otherwise regularize his or her immigration status.
- c. If the student intends to be in the Commonwealth for a period of shorter than the normal school term, they must submit an affidavit indicating how long they intend to be in the Commonwealth. In the case of student who intends to attend class less than the normal school term, the Alien Student Attendance Permit will be granted for that specific period of time.
- d. Unless forfeited pursuant to these regulations, the cash bond or letter of credit described in section 706(R)(1)(6) shall expire upon satisfactory departure of the alien minor prior to expiration of the Alien Student Attendance Permit, or upon other regularization of the child's immigration status. Any amounts outstanding shall be returned to the alien parents immediately thereafter.

# 3. Fees-

There shall be a non-refundable application fee of one hundred dollars (\$100), paid upon submission of the initial application, and a renewal fee of seventy-five dollars (\$75), paid upon renewal before the beginning of each subsequent school term.

4. Revocation-

An Alien Student Attendance Permit shall be revoked, and the alien minor shall be required to immediately depart the Commonwealth upon the occurrence of the following events:

- The alien parent or parents becomes deportable for any reason under Commonwealth a.
- b. The Attorney General determines that the alien parent or parents, the alien child, or the educational institution that the alien child is attending has knowingly violated any term or condition described herein, or has committed a material violation of any Commonwealth immigration law or regulation;
- The alien minor fails to inform the Division of Immigration in writing that the alien c. minor has withdrawn or transferred from the attending school; or
- The Attorney General determines that the presence of the alien minor is no longer in the d. best interest of the Commonwealth.

# Section 707. Authorization For Entry Application Procedure.

- Applications for Authorization for Entry permits shall be submitted to the Main Office for Immigration. A. All applications and supporting documents become the property of the Division of Immigration. Applications shall be processed within seven days of compliance with all applicable requirements. Authorization For Entry permits will be signed by the Immigration Officer except for Short-Term Business Entry Permits. All documents shall be filled out under penalty of perjury.
- B. Necessary documents for filing include:
  - A completed application form; 1.
  - 2. Certified copy of birth certificate;
  - Any document deemed by the Immigration Officer to be necessary to substantiate the applicants 3. entry classification; and
  - 4. One and one quarter inch (1-1/4") frontal photograph in either black and white or color.
- The application fee shall be deposited with the CNMI Treasurer upon filing the necessary documents. The C. fee is non-refundable. Application may be made by mail. Checks must be made payable to "Treasurer of the CNMI".
- Applications shall not be accepted from aliens present in the Commonwealth whose presence is permitted D. solely because they have a pending labor, immigration or legal matter. However, once said matter is decided, the alien may apply for an entry permit, renewal or change of status if the alien prevailed in the labor, immigration or legal matter.

Section 708. Valid Passport. No entry permit shall be issued for a period of time which, at the time of entry is not covered by a valid passport or other valid travel document recognized by the Director of Immigration.

# Section 709. Landing Card.

- Issuance. All aliens entering the CNMI must complete the Immigration Landing Card Form CNMI-958 A. prior to the entry. The form shall be affixed in the passport of the alien. All entries are subject to the condition that the 958-Form be kept within the passport until departure.
- Collection. An immigration inspector must collect the original white copy of the Form CNMI-958 and В. entry permit when alien departs the CNMI. The agent must present an immigration inspector with the

vessel or aircraft manifest with a 958-Form and entry permit for every departing alien immediately after departure. In the event that the alien claims that he is returning to the CNMI upon the same entry permit, then only the 958-Form, and not the entry permit, shall be collected.

# Section 710. Alien Tracking System.

- The Immigration Officer shall, at all times, keep an accurate and up-to-date record of all aliens who are A. present in the CNMI. This shall be done by computer, with appropriate backup systems.
- B. The Alien Tracking System shall file aliens by departure dates. Within each date's file, the names shall be in alphabetical order. Each day, the 958-Forms collected upon departure shall be compared with the day's file in order to detect overstayers. The file on each overstay shall be delivered by the following day to the Immigration Officer for appropriate action.

# Section 711. Denial of Permit. Review.

- The denial of an entry permit shall be in writing stating the reasons for the denial. This writing shall be A. provided to the applicant.
- B. The denial of an entry permit may be appealed to the Attorney General by the person denied or excluded within fifteen (15) days of notice of denial. The Attorney General in his discretion may rely solely on the documents submitted or may supplement them with additional information. He shall provide the denied alien with all the opportunities to be heard made available in Section 16 of Public Law No. 3-105. He may affirm, modify, or reverse the decision.

Section 712. Renewal or Extension of Permit. No permit shall be renewed or extended unless a completed application is filed with the government before the date of expiration.

#### VIII. **EXCLUSION**

Section 801. Threat to Public Health. Any dangerous contagious disease designated by the U.S. Public Health Service and listed at 42 C.F.R. Section 34.2(b) shall be considered a threat to public health. Additionally, any physical condition designated as a threat to public health in the Commonwealth by the Director of Public Health and Environmental Services shall be so considered.

# Section 802. Economic Grounds.

- The following persons will be considered to have no demonstrable means of support: Α.
  - 1. paupers, professional beggars and vagrants;
  - 2. persons who either have no return ticket or do not have sufficient funds to support a stay for the duration of the entry permit; and
  - any person who by reason of poverty, insanity, disease or disability will become a charge upon the 3. public.
- B. Entry may be allowed, in the discretion of the Immigration Officer, if relatives or friends in the CNMI will post sufficient cash with Immigration to ensure the alien's support for the duration of the entry permit. The full amount of cash deposited with the Immigration Office shall be kept in a trust account until the departure of the alien.

Section 803. Record of Examination. An examiner shall prepare a summary of the essential information obtained in the interview. Following this shall be the decision of the examiner written in a separate section.

Section 804. Threat to Public Safety.

#### A. Discontinuance of Entry Permits.

The Attorney General at his discretion may discontinue issuance of entry permits to nationals, citizens, subjects or residents of any country, or any state, province, subsection, territory, division or subdivision thereof, if the Attorney General determines: (i) that the government of such country, state, province, subsection, territory, division or subdivision is unable to provide adequate information regarding backgrounds of the persons embarking from that location; (ii) that the Commonwealth is unable to promptly and accurately assess the backgrounds of such persons; or (iii) that admission of such persons poses an unacceptable risk to the security, health and welfare of the Commonwealth.

#### B. Publication of Notice.

Determinations made pursuant to Section 804(A) may take effect immediately, but shall in every case be published in the next printed edition of the Commonwealth Register and shall be subject to biannual review and renewal. The discontinuance of entry permits may be terminated by future order of the Attorney General, may be renewed indefinitely, or may be for a set period of time.

#### C. Preliminary Waiver.

The Attorney General at his discretion may issue a preliminary waiver, on a case-by-case basis, of the exclusion of a person from an excluded country, state, province, subsection, territory, division or subdivision, provided that the person has satisfied all other requirements for entry under the applicable laws and regulations, and has provided evidence that the following additional conditions have been satisfied prior to embarkation:

- Except as set forth in Subsection (C)(2) below, if the person is coming to the Commonwealth for 1. purposes of tourism, or under a Short-Term Business Entry Permit, Regular-Term Business Entry Permit, Immediate Relative of a Nonalien Entry Permit, Immediate Relative of Alien Entry Permit, Foreign Student Entry Permit, Foreign Press Entry Permit, Distinguished Merit Entry Permit, Nonresident Worker Permit, Minister of Religion Permit, Religious Missionary permit, or Retiree Investor Entry Permit the person must:
  - provide, or have his or her sponsor provide, a bond issued by an approved bond company for the sum of Five Thousand Dollars (\$5,000), such amounts to be used to offset any expense reasonably incurred by the Commonwealth should the person be convicted of any crime or should the person violate any condition of entry; and
  - b. if the person is embarking from an excluded country which the Attorney General determines has repeatedly caused undue delays or refused to accept the return of its nationals, citizens, subjects or residents, such person must bear an original, written statement, bearing the official seal of the relevant immigration or government authority in the excluded country, declaring that such country will unconditionally accept the return of the person without delay, such letter to be signed by a person authorized to expedite entry into that country and including the title and official contact information of said signatory.
- If the person coming to the Commonwealth is a medical professional seeking to enter the 2. Commonwealth for the purpose of rendering medical services or is the spouse or child of said medical professional, is the spouse or child of a U.S. national or citizen currently residing in the Commonwealth whose purpose for coming to the Commonwealth is to reside permanently with said U.S. national or citizen, or is an official government representative traveling to the Commonwealth for the sole purpose of conducting official government business or is the spouse or child of said government representative, such person must obtain a certification to that effect from the Attorney General.

A signed letter issued by and bearing the seal of the Office of the Attorney General, and imposing any additional conditions as the Attorney General may see fit, shall be delivered to the applicant and shall evidence the issuance of a waiver under this Section.

#### D. Exempt Aliens.

The following Aliens shall be exempt from the requirements of this Section 804:

- 1. United States permanent residents who present a valid, un-expired Form I-551 – Permanent Resident Card, Form I-551 – Alien Registration Receipt Card, or a valid un-expired passport containing a valid un-expired temporary residence stamp ("Processed for I-551 Temporary Evidence of Lawful Admission");
- Any alien who holds the equivalent of U.S. Lawful Permanent Resident status, or holds status as a 2. temporary resident authorized to work in and unconditionally return to a country that is listed on the Visitor Entry Permit Exempt List pursuant to Immigration Regulation 703(B)(3);
- 3. Any alien with a valid United States entry visa which is valid for at least sixty (60) days from the date of entry into the CNMI provided that the United States visa permits re-entry back into the United States after entry and departure from the CNMI;
- 4. Any alien legally in the Commonwealth on the effective date of this regulation, provided such alien remains continuously in legal status. Such aliens may freely depart and return to the Commonwealth subject to compliance with other applicable law and regulation; or
- 5. Children of an alien legally traveling to or residing in the Commonwealth who will be under the age of twelve (12) on the date of departure from the Commonwealth.

#### IX. FOREIGN INVESTORS PERMIT

# Section 901. Definitions.

**COMMONWEALTH REGISTER** 

- "Approved Investment" means an investment made by an alien investor in the Commonwealth pursuant to A. a Certificate of Foreign Investment issued by the Secretary of Commerce.
- B. "Alien Investor" means any individual, but not legal entities such as corporations, partnerships or other entities existing solely by virtue of the law. An "Alien Investor" is a person without United States citizenship, Commonwealth permanent residency or certificate of identity, or Trust Territory citizenship, that qualifies as a holder of a Certificate of Foreign Investment issued by the Secretary of Commerce.
- C. "Certificate of Foreign Investment" means a Certificate issued by the Director of Commerce and Labor pursuant to rules and regulations issued by the Director of Commerce and Labor. The Certificate constitutes proof of the holder's participation as an alien investor in an approved investment in the Commonwealth of the Northern Mariana Islands.
- "Director" means the Director of Immigration in the Office of the Attorney General for the Commonwealth D. of the Northern Mariana Islands.
- "Family" of a holder of a Certificate of Foreign Investment means the holder's spouse, the holder's E. children by blood and the holder's children by adoption effective one year prior to the date of application for Certificate of Foreign Investment.
- F. "Foreign Investor Permit" means a permit issued by the Director to a holder of a Certificate of Foreign Investment that complies with the conditions of issuance of a "Foreign Investor Permit" provided herein. The permit is issued for purposes of providing entry into and exit from the Commonwealth of the Northern Mariana Islands for a holder of a Certificate of Foreign Investment, as long as the Certificate remains in force and effect. A "Foreign Investor Permit" is issued to any holder of a valid Certificate of Foreign Investment, and members of the holder's family complying with the conditions enumerated below.

# Section 902. Foreign Investor Permit.

- A. The Director shall issue a Foreign Investor Permit to any alien investor (and members of his family):
  - 1. who represents to the Office of the Director a current Certificate of Foreign Investment issued to himself or to a person of such relation that the applicant would be considered a member of a certificate holder's family,
  - 2. who submits evidence of good moral character in seeking such permit, which evidence shall be obtained from a competent authority of and certified by an officer in the United States Consulate, or law enforcement official, of the country in which the Alien Investor permanently resides, and
  - 3. who submits payment of non-refundable application fee for issuance of a Foreign Investor Permit, as specified below, and
  - 4. who presents a currently valid passport or certificate of identity for himself and any member of his immediate family seeking such permit.
- B. The Foreign Investor Permit shall allow the alien investor entry and exit, of any frequency or duration, to and from the Commonwealth of the Northern Mariana Islands. The permit shall have no effect other than for the purposes of foreign investment shall not vest in the holder thereof, or his immediate family, any rights to permanent residence for reasons unrelated to operation of an approved investment, or rights to CNMI citizenship or United States citizenship.
- C. The Foreign Investor Permit shall be valid for an indefinite period of time, subject to revocation upon the conditions specified below.
- D. The Director shall review and take action (issuance or denial) within fifteen (15) days following receipt of a completed application.
- E. In the event the Director denies the alien investor's application for a Foreign Investor Permit, he shall state the reasons for the denial, in writing, within the time period specified in Section 902(D).

# Section 903. Revocation of Foreign Investor Permit.

- A. Upon written notification from the Director of Commerce and Labor that a Certificate of Foreign Investment has been revoked, the Director shall revoke the Foreign Investor Permits of the holder and his family provided, however, that the revocation shall not take effect until six months following the date of revocation for the Certificate of Foreign Investment.
- B. Upon written notice from the Director of Commerce and Labor of the revocation of a Certificate of Foreign Investment, the Director shall send notice of revocation of the Foreign Investor Permits for the Certificate holder and his family to the Certificate holder. This written notice shall specify the date of termination of the Visas which shall be six months from the date of revocation of the Certificate of Foreign Investment.

# Section 904. Schedule of Fees.

- A. An application for a Foreign Investor Permit shall be accompanied by:
  - 1. a non-refundable application fee of five hundred dollars (\$500.00) for the holder of the Certificate of Foreign Investment, and
  - 2. a non-refundable application fee of five hundred dollars (\$500.00) for each member of the holder's family for which he or she desires issuance of a Foreign Investor Permit.

### X. HEARINGS

<u>Section 1001. Procedures.</u> Hearings on certificates of identity and permanent residence shall be conducted in accordance with the CNMI Administrative Procedures Act (1 CMC Section 9101).

# XI. EFFECT OF REGULATIONS

<u>Section 1101. Grandfather Clause.</u> All entry permits validly issued upon the effective date of these regulations shall remain valid until their expiration date. The renewal of any entry permit shall for the purpose of these regulations be treated as an initial application.

<u>Section 1102</u>. <u>Severability</u>. If any provisions of these regulations, or order issued under these regulations, or the application of any rule, regulations or order to any person or circumstances shall be invalid by a court of competent jurisdiction, the remainder of these rules, regulations, or orders issued under these rules and regulations, or the application of such rule, regulations, or order to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

# XII. FEES

Section 1201. Fees. The following schedule of non-refundable fees shall apply:

Α.	Vessel or Aircraft Permission to Land	\$100.00
B.	All Other Entry Permits (applications, extensions, renewals)	\$100.00
C.	Alien Registration Card	\$25.00
D.	Duplicate Copies of Permits, Alien Registration Cards	\$25.00

# XIII. PERMANENT RESIDENCE

Section 1301. Definition. Permanent residence refers only to the status granted under Public Law No. 5-11.

# Section 1302. Permanent Resident Identification Card.

- A. A permanent resident shall receive a tan-colored card with a blue seal of the CNMI government that states in green ink "Commonwealth of the Northern Mariana Islands Permanent Resident". This shall be the only recognized proof of permanent residence.
- B. The Director shall forthwith issue said cards to person who qualify for permanent residence under Public Law No. 5-11 upon submission of a green card and sufficient proof of eligibility.
- C. Holders of white cards issued under INO Regulations 11.8(b) shall not be considered permanent residents.

# XIV. PROTECTION FROM REFOULEMENT

# Section 1401. Protection from Refoulement.

A. Applicability. The following regulations are intended to implement the protections contemplated in the Memorandum of Agreement ("MOA") entered between the Commonwealth of the Northern Mariana Islands ("Commonwealth") and the United States Department of Interior, Office of Insular Affairs, executed on September 12, 2003, as well as Public Law 13-61. These regulations provide procedures for determining whether an alien subject to removal is eligible for protection under 3 CMC § 4344(d), which implements the nonrefoulement obligations set forth in Article 33 of the 1951 United Nations Convention

relating to the Status of Refugees, as incorporated into the 1967 United Nations Protocol relating to the status of Refugees ("Refugee Protocol"), and Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").<sup>2</sup> As used herein, Protection from Refoulement pursuant to the Refugee Protocol will be referred to as "Refugee Protection," and Protection from Refoulement pursuant to the CAT will be referred to as "CAT Protection" or, under certain circumstances, will be referred to as "CAT Deferral." Collectively, these protections will be referred to as "Nonrefoulement Protection."

- Eligible Applicants. These procedures shall apply only in situations wherein a foreign national (as 1. used herein, the term "foreign national" refers to persons defined as "aliens" elsewhere in Commonwealth law and regulations) has been ordered deported by the Commonwealth Superior Court pursuant to 3 CMC § 4341, or has been denied entry at a Commonwealth port of entry ("POE"), pursuant to 3 CMC § 4331 et seq., and prior to removal from the Commonwealth the individual expresses fear of persecution or torture in the designated country of removal.
- 2. No Affirmative Applications. A foreign national shall not be entitled under any circumstances to submit an application or other assertion of entitlement to Nonrefoulement Protection unless that individual is subject to an order of deportation by a court of competent jurisdiction, is being denied entry to the Commonwealth at a POE or is included as an immediate relative seeking derivative status on an application pursuant to Subsection C(1) of this section.

#### B. Procedural Mechanism.

- Refugee Protection Office. Pursuant to the obligations of the Attorney General as set forth in Public Law 13-61, there is hereby created an Office for Refugee Protection ("ORP") within the Office of the Attorney General ("OAG"). The Attorney General shall staff the ORP with full-time or part-time personnel as necessary in order to perform the duties set forth in these regulations, and to otherwise implement Public Law 13-61.
- 2. Exclusion. Any foreign national attempting to enter the Commonwealth who is determined to be excludable pursuant to 3 CMC § 4322, and who expresses fear of persecution or torture in the designated country of removal, will be afforded a Protection Hearing conducted by the ORP, unless it is determined by the Attorney General or her designee that the expression of fear is manifestly unfounded in view of the applicable nonrefoulement standards set forth herein.
- 3. Deportation. Any foreign nationals against whom a deportation order has been entered by the Superior Court pursuant to 3 CMC § 4341, and who expresses fear of persecution or torture in the designated country of removal, will be afforded a Protection Hearing conducted by the ORP, unless it is determined by the Attorney General or her designee that the expression of fear is manifestly unfounded in view of the applicable nonrefoulement standards set forth herein.
- Determinations of Manifestly Unfounded Claims. 4.
  - Interview. Interviews shall be conducted by the Attorney General or her designee, who a. shall have received specialized training in protection law, relevant country conditions, and in conducting protection-oriented interviews. If requested by either party, an interpreter qualified pursuant to Section B(10)(c), shall be provided. Interviews to determine whether a claim is manifestly unfounded shall be recorded electronically.

<sup>&</sup>lt;sup>1</sup> United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150. Articles 2 to 34 of the Convention are incorporated by the Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (signed by U.S. on November 1, 1968).

<sup>&</sup>lt;sup>2</sup> United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (signed by U.S. on April 18, 1988).

- b. Decision. The manifestly unfounded decision shall be made by the Attorney General or her designee who has received specialized training in protection law and relevant country conditions. The basis for finding that a claim is manifestly unfounded shall be detailed in a written report. For purposes of this section, "manifestly unfounded" shall mean that the claim is clearly fraudulent or not related to the criteria for the granting of *Nonrefoulement* Protection. Neither mandatory bars to protection under Section B(14)(b) nor internal relocation alternatives shall be considered in making the manifestly unfounded determination.
- c. Review. The applicant may, upon written request filed prior to departing the Commonwealth, obtain a review of a determination of a manifestly unfounded claim by an APJ. The decision-maker shall advise the applicant of this right upon delivery of the determination. The APJ may rely solely on the written record or may request additional information or conduct a hearing. The decision of the APJ shall be final and unreviewable, not subject to further judicial or administrative proceedings. The applicant shall have the right to remain in the Commonwealth pending a decision of the APJ, but may be required to remain in detention.

# 5. Advisements.

- a. Right to Protection. A foreign national who has been ordered deported by the Commonwealth Superior Court or who has been excluded at the POE shall be (i) advised that he or she may obtain a Protection Hearing if he or she has a fear of persecution or torture in the designated country of removal that is not manifestly unfounded; (ii) advised of the right to representation at their own expense; and (iii) provided with contact information for the CNMI Bar Association and other organizations approved by the OAG which have indicated availability to assist foreign nationals with their claims. This advisement will be given in writing by way of a pre-printed form, and/or verbally, either by the Attorney General or her designee. Verbal advisements shall be duly recorded, electronically or with a written acknowledgement from the foreign national. All reasonable efforts will be made to ensure that the foreign national understands the substance of this advisement, including without limitation translation of the advisement into an appropriate language, and providing assistance for those with reading difficulties.
- b. Other Rights and Obligations. Unless the Attorney General or her designee has determined that the claim is manifestly unfounded, the OAG shall provide the foreign national with appropriate application forms and instructions on how to fill out the forms.

### 6. Application.

a. Initial Application. Upon receiving the application form and instructions, the foreign national shall have ten (10) business days to file the completed application and any supporting documents with the ORP, at which time the foreign national shall have formally entered Protection Hearing proceedings. This period may be extended at the discretion of the APJ upon a showing of good cause for failure to apply within the requisite time period. The initial application must: (i) give the applicant's true identity; (ii) list all immediate relatives seeking derivative status under Section C(1); and (iii) state the basis for seeking *Nonrefoulement* Protection. Failure to include the information in (i) and (iii) may be grounds for denying a claim.

- b. Amended Application. The application may be amended once, provided it is submitted with any supporting documents to the ORP not less than ten (10) business days prior to the scheduled date of the Protection Hearing. Failure to submit the initial or amended application by the date due may be grounds for denying a claim. Supporting evidence submitted less than ten (10) business days prior to the Protection Hearing may only be admitted by leave of the APJ.
- Government. Any documents or other evidence submitted by the OAG shall be submitted not less five business days prior to the scheduled date of the Protection Hearing.
   Evidence submitted less than five (5) business days prior to the Protection Hearing may only be admitted by leave of the APJ.
- d. Scheduling of Protection Hearing. On the same day that the foreign national submits his or her initial application, or as soon as possible thereafter, the ORP shall set a date for the Protection Hearing, allowing a reasonable amount of time for the foreign national to amend the application as needed to fully and fairly present his or her case. The ORP shall immediately notify the applicant of the date of the Protection Hearing. The date of the Protection Hearing may be extended for good cause, in the discretion of the ORP.
- e. Failure to Appear. Failure to appear for a scheduled hearing shall be considered abandonment of the application and the application shall be denied, except upon a finding by the APJ of exceptional circumstances or failure to provide proper notice of the scheduled interview.

### 7. Detention.

- a. Excluded Persons. If appropriate, and pending a determination on the applicant's request for *Nonrefoulement* Protection, the Attorney General or her designee may decide to detain the foreign national or may allow their temporary admission, in her discretion and under such conditions as will ensure the person's availability for further proceedings. For purposes of Commonwealth immigration laws, applicants granted parole under this provision shall be considered to be temporarily admitted to the Commonwealth consistent with 3 CMC § 4337.
- b. Deported Persons. The decision to detain applicants who have been ordered deported but who are awaiting a determination on the applicant's request for *Nonrefoulement* Protection shall be in the discretion of the Attorney General or her designee, under such conditions as will ensure the person's appearance for further proceedings, or as determined by the Superior Court in accordance with the Commonwealth Entry and Deportation Act, 3 CMC § 4301 *et seq*.
- 8. Fingerprinting and background security checks. The Division of Immigration ("DOI") shall obtain each applicant's name, photograph, date of birth, fingerprints and other information that DOI deems relevant in order to perform a background security check or to otherwise adjudicate the application for protection and administer the immigration laws.
  - a. Excluded Persons. In the case of a foreign national excluded at a POE, such individual shall not be released from the custody of the DOI until this information has been obtained to the satisfaction of the DOI, unless so ordered by a court of competent jurisdiction.
  - b. Cooperation Required. Failure to cooperate with the DOI in providing identity and other background information, or to comply with all instructions of the DOI or the OAG relating to the collection of this information, shall be grounds for denial of the protections described herein, and for arrest and removal from the Commonwealth consistent with Commonwealth immigration law. The Attorney General or her designee may waive any of these requirements under exceptional circumstances, for humanitarian reasons.

c. Conditional Grants. In the event that an individual is deemed to qualify for Nonrefoulement Protection but a background check has not yet been completed to the satisfaction of the OAG, the APJ may conditionally grant protection pending completion of the background check. Any such conditional grant of protection shall be temporary and for no specific duration of time. The OAG may re-assess a conditional grant of protection, and/or issue a final determination as to the protection requested, at any time.

# 9. Administrative Protection Judge.

- a. Appointment. The term "Administrative Protection Judge" ("APJ") means an attorney who has received specialized training in conducting Protection Hearings, and who the Attorney General appoints as an administrative judge under the authority of the Office of the Attorney General. An APJ shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe. The Attorney General delegates to the APJ the authority under 3 CMC § 4344(d) and these regulations to conduct Protection Hearings and to decide whether *Nonrefoulement* Protection is mandated in a particular case.
- b. Protection Consultant. Pursuant to the MOA, the APJ will work with the "Protection Consultant" in conducting Protection Hearings and making protection determinations under 3 CMC § 4344(d) during the first two years that these regulations are effective.
- c. Certification. The APJ shall have the right to certify a case to the Attorney General for her review and disposition.

# 10. Protection Hearing.

- a. Right to Counsel. The applicant has a right to counsel or other form of representation, provided said other form of representation has been previously approved by the Attorney General, at no expense to the government. Any attorney or representative appearing at any proceeding under these regulations shall file a notice of appearance. Service of process, notice, or any other documents upon the individual filing a notice of appearance herein shall be deemed service upon the applicant provided the applicant has duly acknowledged the notice of appearance.
- b. Appearance. The applicant must bring to the Protection Hearing any immediate relative then present in the Commonwealth to whom he or she would like any protection to apply derivatively under Section C(1) of these regulations, unless the applicant demonstrates good cause for the failure to appear. The APJ may question immediate relatives seeking derivative status. Such questioning may take place outside the presence of the applicant.
- c. Interpreters. An applicant who is unable to proceed with the hearing in English, Chamorro or Carolinian will be provided a qualified interpreter. The applicant may also provide his or her own interpreter, however, the decision to allow the applicant to proceed with his or her own interpreter, as opposed to the appointed interpreter, shall be in the exclusive control of the APJ.
  - (1) General qualifications. An interpreter must be at least eighteen (18) years of age, and may not be the applicant's representative or attorney of record, a witness testifying on the applicant's behalf, a relative of the applicant, a person having a financial or other personal interest in the outcome of the applicant's case, or an employee or representative of the country or countries concerning which the applicant has expressed a fear of return.
  - (2) Specific qualifications. In addition to the general qualifications, before allowing an interpreter to provide interpreting services to an applicant during a Protection

- Hearing, the APJ must find the interpreter qualified pursuant to the requirements set forth by the ORP.
- (3) Interpreter's Oath. Before allowing an interpreter to provide interpreting services in a Protection Hearing, the APJ shall administer an oath to the interpreter establishing that the interpreter (i) will translate fully and accurately to the best of their ability; (ii) will keep confidential all information (including the identity of the applicant) obtained during the Protection Hearing; and (iii) meets the qualifications set forth for interpreters as set forth by the ORP.
- d. Record. The Protection Hearing will be recorded so that a record of the proceeding will be preserved. The only recording equipment permitted in the proceeding will be the equipment used by the APJ to create the official record. No other photographic, video, electronic, or similar recording device will be permitted to record any part of the proceeding. The ORP shall, in the event of an appeal, make a copy of the recording available to the applicant.
- e. Confidentiality of Proceedings. The Protection Hearing shall not be open to the public, unless (i) the applicant states for the record that he or she wishes to waive a closed hearing or submits a written statement indicating the same; and (ii) the OAG does not oppose the waiver.
- f. Oath. Testimony of witnesses appearing at the hearing shall be under oath or affirmation, declaring, under penalty of perjury under 6 CMC § 3306, that he or she will testify truthfully.
- g. Evidence. The Commonwealth Rules of Evidence do not apply in a Protection Hearing, but may be cited by either party as persuasive authority with respect to the procedure to be employed by the APJ and/or the weight that the APJ should attach to certain evidence. The APJ may make any procedural decisions necessary for the fair and orderly discharge of these proceedings, including but not limited to the exclusion of irrelevant and/or repetitious testimony or documentary evidence. The APJ, at her discretion, may allow telephonic or video testimony of witnesses who cannot reasonably attend, provided the requesting party bears the expense of providing such testimony. If the APJ denies the admission of such testimony, or any other evidence, she shall give the reason for the disallowance on the record. Nothing in this section is intended to limit the authority of the APJ to properly control the scope of evidence admissible in the Protection Hearing.
- h. Procedure. The purpose of the hearing shall be to elicit all relevant and useful information bearing on the applicant's eligibility for protection. While the burden of proof rests with the applicant, the APJ should endeavor to ascertain and evaluate all the relevant facts and play an active role in introducing evidence regarding current country conditions. The APJ conducting the Protection Hearing will (i) verify the applicant's identity and ask him or her basic biographical questions; (ii) ask the applicant about the reasons he or she is requesting protection; (iii) ask the applicant questions to determine whether he or she meets the legal requirements for protection and whether any grounds for mandatory denial exist; and (iv) may conduct any other examination of any witness as may be appropriate in the APJ's discretion.
- i. Opportunity to Present Evidence.
  - (1) Applicant. The applicant shall have the fair opportunity to present the applicant's full case, including the right to present all relevant documentary evidence timely submitted, in any form, as well as oral testimony of witnesses or of the applicant, including expert evidence concerning country conditions. Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation, printed legibly or typed, and a certification signed by the

translator. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities.

- (2) Government. An assistant attorney general appearing on behalf of the Commonwealth government (hereinafter, in this context, the "Government") shall have the right to appear and to present evidence, to call and cross-examine witnesses, and to cross-examine the individual applicant.
- (3) Reliance on information compiled by other sources. In deciding whether an applicant has established eligibility for the *Nonrefoulement* Protections described herein, the APJ may rely on material provided by the Department of Homeland Security, Department of State, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.
- (4) Limitations. Nothing in this section shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents or employees of the OAG or DOI, or the Department of Justice, Department of State, or the Department of Homeland Security. Persons may seek documents available through an Open Government Act request pursuant to 1 CMC § 9901 et seq.

# 11. Confidentiality.

- a. Right of Privacy. In most cases arising under these regulations, an individual's right of privacy as guaranteed by the law and Constitution of the Commonwealth will be clearly invoked. Further, in many cases, safety and protection of an applicant will require that information obtained in connection with such an application must remain confidential. Accordingly, all information contained in or pertaining to any application for protection under these regulations that reasonably indicates or infers that the particular individual has requested protection shall not be disclosed without written consent of the applicant, except as permitted by this Section or at the discretion of the Attorney General.
- b. Limitations. This Section shall not apply to any disclosure to:
  - (1) Any Commonwealth or United States government (federal or state) official or contractor having a need to examine information in connection with:
    - (i) The adjudication of applications for protection under these regulations;
    - (ii) The defense or prosecution of any legal action arising from or relating to the adjudication of, or failure to adjudicate, an application for protection under these regulations;
    - (iii) The defense or prosecution of any legal action of which an application for protection under these regulations is a part; or
    - (iv) Any Commonwealth or United States government (federal or state) law enforcement activity concerning any criminal or civil matter; or
  - (2) Any Commonwealth, or Federal, State, or local court in the United States concerning any legal action:
    - (i) Arising from the adjudication of, or failure to adjudicate, an application for protection under these regulations; or

- (ii) Arising from the proceedings of which an application for protection under these regulations is a part.
- Prior to concluding the hearing, the APJ shall give written notice to the applicant of the date and time that they are to appear to receive the decision, and if the applicant is not in detention, he or she shall be required to return to the ORP to receive the decision. If the ORP has decided that the applicant is not eligible for protection, the applicant shall have an opportunity to appeal the decision to the Attorney General under Section B(16) of these regulations within fifteen (15) business days from the date on which the applicant receives the decision. The Government may likewise appeal the decision within that fifteen-day period. If there is no appeal, the ORP's decision shall become final and not subject to further judicial or administrative review. In the case of a denial, the applicant shall be removed from the Commonwealth according to applicable law. In the case of a grant of protection, the applicant shall not be removed to the country where the applicant would more likely than not be persecuted or tortured, subject to Section B(17) of these regulations.
- 13. Substantive law. The following substantive law shall be applied at the Protection Hearing. U.S. law and the law of other jurisdictions applying the treaty protections set forth above may be consulted as persuasive authority, but are not binding on the decision-maker.
  - a. Refugee Protection: The burden of proof is on the applicant for Refugee Protection under these regulations to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:
    - (1) Past threat to life or freedom.
      - (i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in that country on the basis of the original claim. This presumption may be rebutted if the APJ finds by a preponderance of the evidence that:
        - (A) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or
        - (B) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.
      - (ii) In cases in which the applicant has established past persecution, the Government shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (1)(i)(A) or (1)(i)(B) of this subsection.
      - (iii) If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

- (2) Future threat to life or freedom. An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the APJ finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so. In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the APJ shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:
  - (i) The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and
  - (ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country.
- (3) Reasonableness of internal relocation. For purposes of determinations under paragraphs (a)(1)(i)(B) and (a)(2) of this subsection, adjudicators should consider, among other things, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; the quality of the administrative, economic, or judicial infrastructure in the place of proposed relocation; geographical limitations on the applicant's ability to relocate; and social and cultural constraints, such as age, gender, health, and social and familial ties. These factors may or may not be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.
  - In cases in which the applicant has not established past persecution, the (i) applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.
  - In cases in which the persecutor is a government or is government-(ii) sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Government establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.
- b. CAT Protection and CAT Deferral: The burden of proof is on the applicant for CAT Protection to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.
  - "Torture" defined. (1)
    - Torture is defined as any act by which severe pain or suffering, whether (i) physical or mental, is intentionally inflicted on a person for such

purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

- (ii) Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture.
- Torture does not include pain or suffering arising only from, inherent in (iii) or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.
- (iv) In order to constitute torture, mental pain or suffering must be prolonged mental harm caused by or resulting from:
  - The intentional infliction or threatened infliction of severe (A) physical pain or suffering;
  - (B) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
  - (C) The threat of imminent death; or
  - (D) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the sense or personality.
- In order to constitute torture, an act must be specifically intended to (v) inflict severe physical or mental pain or suffering. An act that results in unanticipated or unintended severity of pain and suffering is not torture.
- In order to constitute torture an act must be directed against a person in (vi) the offender's custody or physical control.
- Acquiescence of a public official requires that the public official, prior (vii) to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.
- Noncompliance with applicable legal procedural standards does not per (viii) se constitute torture.
- Consideration of Evidence. In assessing whether it is more likely than not that (2) an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to:
  - Evidence of past torture inflicted upon the applicant; (i)

**COMMONWEALTH REGISTER** 

- (ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
- (iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
- (iv) Other relevant information regarding conditions in the country of removal.
- (3) Order of Review. In considering an application for CAT Protection, the APJ shall first determine whether the applicant is more likely than not to be tortured in the country of removal. If the APJ determines that the applicant is more likely than not to be tortured in the country of removal, the applicant is entitled to CAT Protection. An applicant entitled to such protection shall be granted all privileges provided for such individuals under Section C of these regulations, unless the applicant is subject to mandatory denial of protection under Section B(14)(b) of these regulations.
- (4) Effect of mandatory denial. If an applicant otherwise entitled to CAT Protection is subject to a mandatory denial under Section B(14)(b), the applicant's removal shall be deferred under Section B(14)(b)(2)(ii), and will be referred to as a CAT Deferral.
- 14. Approval or denial of application.
  - a. General. Subject to paragraph (b) of this Section, an application for Refugee Protection or CAT Protection shall be granted if the applicant's eligibility is established pursuant to Sections B(13)(a) or (13)(b) of these regulations.
  - b. Mandatory denials.
    - (1) Scope. An application for Refugee or CAT Protection shall be denied if:
      - (i) The applicant ordered, incited, assisted or participated in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion;
      - (ii) The applicant has been convicted of a particularly serious crime and the APJ determines that the applicant constitutes a danger to the community;
      - (iii) There are serious reasons for believing that the applicant has committed a serious nonpolitical crime outside the Commonwealth, prior to arrival of the alien in the Commonwealth;
      - (iv) There are reasonable grounds to believe that the individual is a danger to the safety or security of the Commonwealth or the United States. Such grounds shall include but not be limited to persons who have engaged in terrorist activity, as that term is defined by 8 USC 1182(a)(3)(B)(iii).

If the evidence indicates the applicability of one or more grounds for denial of withholding enumerated in this subsection, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(2) Effect of Mandatory Denial.

- (i) Refugee Protection. An applicant who qualifies for Refugee Protection but is denied such protection as the result of a Mandatory Denial pursuant to paragraph (b)(1) of this subsection shall be removed forthwith pursuant to Commonwealth exclusion and deportation law, unless the applicant also qualifies for CAT Protection, in which case removal will be pursuant to paragraph (b)(2)(ii) of this subsection.
- (ii) CAT Deferral. An applicant who qualifies for CAT Protection but is denied such protection as the result of a Mandatory Denial pursuant to paragraph (b)(1) of this subsection shall be granted deferral of removal to the country where he or she is more likely than not to be tortured.
  - (A) Effect. Deferral of removal under this subsection:
    - (I) Does not confer upon the foreign national any lawful immigration status in the Commonwealth;
    - (II) Will not necessarily result in the foreign national being released from the custody of the OAG;
    - (III) Is effective only until terminated; and
    - (IV) Is subject to review and termination if the APJ or the Attorney General determines that it is not likely that the foreign national would be tortured in the country to which removal has been deferred, or if the foreign national requests that deferral be terminated.
  - (B) Termination of CAT Deferral.
    - (I) At any time while a CAT Deferral is in effect under this subsection, the Government may move the APJ to conduct a hearing to determine whether the CAT Deferral should be terminated, or the APJ may sua sponte conduct such a hearing. The APJ shall grant the Government's motion to reopen if the motion is accompanied by evidence that is relevant to assessing the likelihood that the foreign national would be tortured in the country to which removal has been deferred and that such evidence was not presented at the previous hearing, regardless of the previous availability of the evidence. The APJ shall provide notice to the foreign national and the Government of such hearing and shall allow both parties the opportunity to submit supplemental evidence for use in the determination of whether it is more likely than not that the foreign national will be subject to torture in the country of removal.
    - (II) The APJ shall make a *de novo* determination based on the record in the initial proceeding and any new evidence provided as to whether it is more likely than not that the foreign national will be tortured in the country of removal. This determination shall be made under the standards for eligibility set forth in Section B(13)(b). The burden remains with the foreign

- national to establish that it is more likely than not that he or she will be tortured in the country to which removal has been deferred.
- (III) If the APJ determines that the foreign national is more likely than not to be tortured in the country to which removal has been deferred, the CAT Deferral shall remain in place. If the APJ determines that the foreign national has not established that he or she is more likely than not to be tortured in the country to which removal has been deferred, the CAT Deferral shall be terminated, and the foreign national may be removed to that country. Appeal of the APJ's decision shall lie with the Attorney General in accordance with the procedures set forth in Section B(16).
- (IV) At any time while removal is deferred, the foreign national may request to the APJ in writing that such deferral be terminated. The APJ shall honor such request if it appears, based on the written submissions of the foreign national and of the Government, or based on a hearing conducted by the APJ for this purpose, that the request is knowing and voluntary.

# 15. Removal to third country.

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- a. Applicability. This section applies to any foreign national subject to an order of deportation under 3 CMC § 4341 or to a determination of excludability under 3 CMC 4322 whom the Commonwealth intends to remove to a country not designated during the deportation or exclusion proceedings ("undesignated country").
- b. Notice. The Commonwealth shall provide the foreign national with written notice that it intends to remove the foreign national to an undesignated country. The notice shall also advise that the alien may request *Nonrefoulement* Protection from removal to the undesignated country pursuant to these regulations.
- c. Referral for Manifestly Unfounded Determination. If the foreign national requests Nonrefoulement Protection from the undesignated country within seven (7) calendar days of receiving the notice described in paragraph (b) of this subsection, the foreign national shall be immediately referred to the OAG for an interview to determine whether the foreign national's asserted fear of removal is manifestly unfounded in accordance with Section B(4) of these regulations.
- d. Decision. The Commonwealth shall not remove the foreign national to an undesignated country for at least seven (7) days following the Commonwealth's service of the notice upon the foreign national. If the foreign national requests *Nonrefoulement* Protection from removal to the undesignated country during that period, the Commonwealth shall not remove the foreign national to that country until there has been a final determination that the *Nonrefoulement* Protection claim is manifestly unfounded or, if the claim is finally determined not to be manifestly unfounded, that the foreign national is not eligible for *Nonrefoulement* Protection from removal to the undesignated country.
- 16. Appeals. Either the applicant or the Government may appeal the ORP's decision to grant, deny or terminate *Nonrefoulement* Protection to the Attorney General or her designee within fifteen (15) business days of service upon the applicant. If no appeal is made to the Attorney General within

this time, the ORP's decision shall become final and unreviewable administratively or judicially. The applicant shall be entitled to remain in the Commonwealth pending the outcome of the appeal but may be required to remain in detention.

- Notice of Appeal. An appeal pursuant to this section is taken by filing a written notice a. with the OAG, which is signed by the appealing party or his or her counsel, and which states the relief requested. The appealing party, or his or her counsel or representative. may also include a concise statement of the grounds for the appeal.
- b. Certification of record. Upon timely receipt of a notice of appeal, the OAG shall request that the ORP promptly certify and transmit to the Attorney General the entire record, including the original recording of proceedings, if any.
- Form of Appeal. The appeal and all attachments must be in English, Carolinian or C. Chamorro, or accompanied by a certified English translation.
- d. Procedure for Review. Upon review, the Attorney General may, at her discretion, take any of the following actions: (1) restrict review to the existing record; (2) permit or request legal briefs or supplement the record with new evidence; (3) hear oral argument; or (4) hear the matter de novo, in which case the hearing shall be conducted pursuant to Section B(10) through Section B(12) of these regulations.
- e. Decision. Upon completion of review, the Attorney General shall affirm, reverse, or modify the findings, order, or decision of the APJ in writing within ten (10) business days, or as soon thereafter as reasonably practical. The Attorney General may remand under appropriate instructions all or part of the matter to the APJ for further proceedings, e.g., the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.
- f. Finality. The decision of the Attorney General shall be final and unreviewable, not subject to further judicial or administrative review. A case may only be reopened upon a motion from the Government or sua sponte by an APJ pursuant to Section B(17) of these regulations, or upon a motion by the applicant establishing prima facie eligibility due to a fundamental change of circumstances.
- 17. Reconsideration of grant of protection. A grant of protection is for an indefinite period, but does not bestow upon an applicant a right to remain permanently in the Commonwealth. The ORP may reopen a case, either sua sponte or upon motion from the Government, and re-evaluate a grant of CAT or Refugee Protection. Such re-evaluation may be performed either on a systematic, periodic basis (i.e., every two years, etc.), or in a specific instance if country conditions have changed in a fundamental and durable way that affects the likelihood that the Grantee will be persecuted and/or tortured, if another country is identified in which the applicant can reside free from persecution or torture, if the applicant has committed certain crimes or engaged in other activity that triggers a Mandatory Denial set forth in Section B(14)(b) above, if the ORP determines that the applicant engaged in misrepresentation of a material fact in connection with his or her application, or if the ORP determines that there are serious reasons for believing that the foreign national no longer requires protection under Public Law 13-61.
  - Procedure. Except with respect to conditional grants of protection pursuant to Section a. B(8)(c) of these regulations, the OAG will not terminate CAT or Refugee Protection pursuant to this section unless the individual has been provided notice, in person or by mail to the last known address, as well as the opportunity for a hearing before an APJ, at which time the OAG must show by a preponderance of the evidence that the individual no longer qualifies for such protection.
  - b. Appeals. A foreign national or the Government may file an appeal to the Attorney General of any decision under this section, pursuant to Section B(16) of these regulations,

- within fifteen (15) business days of service of the decision upon the applicant. If no appeal is made to the Attorney General within this time, the ORP's decision shall become final and unreviewable administratively or judicially.
- c. Effect of Termination of Refugee or CAT Protection. In the event that an order terminating Refugee or CAT Protection is issued by the ORP, and no appeal is taken or the termination order is affirmed on appeal, the individual whose protection is terminated shall be required to depart the Commonwealth forthwith pursuant to Commonwealth immigration laws.
- 18. Employment authorization. Applicants requesting protection do not have a right to work in Commonwealth and shall not be given the opportunity to apply for employment authorization at the time they request protection. They may, however, request temporary work authorization ("TWA") before a final decision, meaning all appeals have been exhausted, is made on their case if ninety (90) calendar days have passed since the initial request for protection and no final decision has been made, or if they have been granted a conditional grant of protection pursuant to Section B(8)(c) above. The TWA application process shall be governed by the Department of Labor's Special Circumstances Temporary Work Authorizations regulations.
- 19. Right to Travel. Applicants (along with any potential derivative family members) must obtain advance permission from the DOI and the ORP before leaving the Commonwealth if they wish to return. Failure to obtain such permission creates a presumption that the applicant has abandoned his or her request with the ORP, and he or she may not be permitted to return to Commonwealth. If an applicant obtains permission to depart and returns to his or her country of feared persecution and/or torture, he or she shall be presumed to have abandoned his or her request, unless he or she can show compelling reasons for the return.

# C. Implications After Refugee or CAT Protection Is Granted

- 1. Derivative protection for immediate family. Immediate family members of an applicant whose request for Refugee Protection or CAT Protection is granted ("Grantee"<sup>3</sup>)<sup>3</sup> will automatically receive the same status, provided that the family member is present in Commonwealth, was included on the initial application, and is not barred from relief pursuant to Section B(14)(b)(1) of these regulations. This includes the Grantee's spouse and unmarried children under twenty-one (21) years of age as of the date of submission of the form of application for Nonrefoulement Protection. Common-law marriages shall qualify, provided that such unions are legally recognized in the applicant's country of origin. A Grantee must establish a qualifying relationship to any immediate family member by a preponderance of the evidence. Family members outside the Commonwealth are not entitled to derivative protection. "Grantee" shall not refer to individuals granted deferral of removal pursuant to Section B(14)(b)(2)(ii) above. In light of the temporary nature of such deferral of removal, applications will be handled on a case-by-case basis.
- 2. Identification documents. A Grantee and immediate family members who are accorded derivative protection shall be issued Commonwealth identification documents evidencing status.
- 3. Work authorization. A Grantee may be granted a temporary work authorization, which shall be renewable on an annual basis upon a finding of continuing refugee status by the Attorney General. For purposes of this paragraph, a Grantee shall not be considered a nonresident worker as defined pursuant to the Nonresident Workers Act but shall be granted an entry permit pursuant to Section 706(P) of the Immigration Rules and Regulations.
- 4. Right to travel. Grantees (along with any derivative family members) must obtain advance written permission from the DOI before leaving Commonwealth in order to return. Failure to obtain such

permission creates a presumption that the Grantee has abandoned his or her protection in Commonwealth, and he or she may not be permitted to return. If a Grantee obtains permission to depart and returns to his or her country of feared persecution and/or torture, he or she shall be presumed to have abandoned his or her protection in Commonwealth, unless he or she can show compelling reasons for the return.

5. Right to Assistance. Nothing in these regulations shall prevent a person from applying for or receiving public benefits, including but not limited to health care, public education, or living assistance, for which they may be eligible under law to the same extent as other foreign nationals lawfully residing in the Commonwealth.

# PUBLIC NOTICE

# NOTICE AND CERTIFICATION OF ADOPTION OF AMENDMENTS TO THE REGULATIONS OF THE COMMONWEALTH ELECTION COMMISSION

I, Miguel M. Sablan, Chairman, Commonwealth Election Commission, which is promulgating the Regulations amending Section 5.27 of the Commonwealth Election Commission Regulations, published in the Commonwealth Register Volume 27, Number 01, on January 17, 2005 pages 23813 to 23818, by my signature below hereby certify that as published, such amendments to the Regulations are true, complete and a correct copy of the amendments to the regulations previously published by the Commonwealth Election Commission. The amendments to Section 5.27 of the Commonwealth Election Commission's Regulations was adopted on December 17, 2004 as follows:

Section 5.27 Counted Ballots (Post-Tabulation Procedures). Once the ballots have been counted for each particular precinct, then they are to remain segregated and identified as counted ballots from that precinct. The ballots must be segregated in a portion of the counting center, and they are to be guarded by at least two people, while the tabulating of ballots is ongoing. The election commission must retain the actual ballots for 48 16 months from the date of the election. After 48 16 months passed then the

commission may permanently dispose the ballots.

I further request and direct that this Notice and Certification of Adoption be published in the Commonwealth Register and that these regulations amending the Commonwealth Election Commission's Regulations become effective upon its publication.

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on Saipan, Northern Mariana Islands.

10

Certified by:	MIGUEL M. SABLAN Chairman Commonwealth Election Commission	1-26-05 Date
Filed by:	Bernadita B. Dela Cruz Commonwealth Registar	02.07.05 Date

Received by:

Thomas A. Tebuteb Special Assistant for Administration Executive Offices of the Governor



# Department of Commerce

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS Caller Box 10007 CK., Saipan, MP 96950 Tel. (670) 664-3000/1 . Fax: (670) 664-3067

NOTICE OF CERTIFICATION AND ADOPTION OF PROPOSED INSURANCE RULES AND REGULATIONS PURSUANT TO 1 CMC §§ 25454, 9104, 4 CMC §§ 7101 et seg. BY THE DEPARTMENT OF COMMERCE

I, Andrew S. Salas, Secretary of the Department of Commerce which promulgated as a Notice of Intent to Adopt Insurance Rules and Regulations published in the Commonwealth Register, vol. 27, no. 1, at 23819-23826 (January 17, 2005), by signature below hereby certify that as published such Insurance Rules and Regulations are true and correct copies of the Insurance Rules and Regulations previously proposed by the Department of Commerce which, after the expiration of appropriate time for comment, have been adopted with no changes.

By signature below, I hereby certify that the Insurance Rules and Regulations are the true, correct and complete Proposed Insurance Rules and Regulations proposed by the Department of Commerce. I further request and direct that this Notice and Certification of Adoption be published in the Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on this day of February, 2005, at Saipan, Commonwealth of the Northern Mariana Islands

Andrew S. Salas Secretary of Commerce

Filed by:

ala Orin Bernadita B. DelaGruz Commonwealth Register

Thomas A.

SAA

Rec

2-15-05

Date

Time

Time

# NOTICE AND CERTIFICATION OF ADOPTION OF THE REGULATIONS AMENDING ALIEN LABOR RULES AND REGULATIONS SECTION II.

We, Dr. Joaquin A. Tenorio, Secretary of the Department of Labor, and Pamela Brown, Attorney General, who promulgated Regulations Amending Alien Labor Rules and Regulations Section II, published in the Commonwealth Register, Volume 27, Number 01, January 17, 2005, at pages 23780 to 23788 by signing below hereby certify that as published such Regulations are a true, complete and correct copy of the Regulations previously proposed which, after the expiration of the time for public comment, have been finally adopted without modification. We further request and direct that this Notice and Certification be published in the CNMI Commonwealth Register.

We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 14th day of February 2005 in Saipan, Commonwealth of the Northern Mariana Islands.

Dr. Joaquin A. Tenorio	Jambrown Pamela Brown
Secretary of Labor	Attorney General
Filed By:	Received by
Isdela Crunx	um fur
Bernadita B. Dela Cruz	Thomas A./Tebuteb
Commonwealth Register	Special Assistant for Administration
Date:	Date: <b>/////</b>

Pursuant to 1 CMC § 2153, as amended, the above certification has been reviewed and approved as to form and legal sufficiency by the Office of the Attorney General.

Dated: 2/14/05 Pamela Brown

Attorney General



# Commonwealth Utilities Corporation



# **PUBLIC NOTICE**

# ADOPTION OF ELECTRIC SERVICE REGULATIONS BY THE COMMONWEALTH UTILITIES CORPORATION FUEL SURCHARGE FEE

This regulation, now designated Part 24.5.8.1 of the CUC Electric Service Regulations, instituting a fuel surcharge fee, was adopted by the Board of Directors of the Commonwealth Utilities Corporation (CUC) on January 25, 2005 at a special meeting, pursuant to 4 CMC, Section 8157 and 8143 (b). This regulation shall have the force and effect of law and shall be binding on all persons and entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands (CNMI).

Notice of the proposed fuel surcharge fee for electrical power was published in Volume 26, Number 10 of the Commonwealth Register on October 26, 2004. Public Hearings were held in Saipan, Tinian and Rota. After considering the comments received, the fuel surcharge fee regulation was adopted with amendments allowing for phased implementation as determined by the CUC Board of Directors.

This regulation, having been duly adopted in compliance with all applicable law, is hereby submitted for filing with the Registrar of Corporations and publication in the Commonwealth Register. Pursuant to 1 CMC sec. 9105(b), these amended regulations are effective 10 days after filing and publication.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 15<sup>th</sup> day of February 2005, on Saipan, CNMI.

By: Thanein Drewens	Date: 2/15/05
Francisco Q, Guerrerd, Chairman	
CUC Board of Directors	
Received by X.	
Received by:	1.1
Thomas A. Teouteb, Special Assistant for Administration	Date: 2/13/01
Office of the Governor	
Filed by:	1
Bernadita B. Dela Cruz	Date: 2/15/65
Bernauta B. Bela Cruzy	Date: $\frac{2}{13}$
Registrate of Corporations	

# COMMONWEALTH UTILITIES CORPORATION REGULATIONS REGARDING

# Part 24.5.8.1 FUEL SURCHARGE FEE

- 1. CUC fuel costs shall be recovered through the base electric rates and through the methodology provided in this regulation for the initial and subsequent years' annual fuel surcharge fee (FSF) and a monthly fuel surcharge adjustment (MFSA). The FSF shall take effect immediately upon compliance with the Administrative Procedure Act,1 CMC § 9101 et. seq.
- 2. The purpose of the FSF is to pass through to all consumers of CUC electricity, increases and decreases in fuel costs for the production of electricity, which are above or below the base rate allocation for fuel.
- 3. Notwithstanding other provisions of these regulations, the Comptroller and the Board may provide for discounts or reductions in the rates below the annual FSF ceiling, provided that such discounts or reductions: (a) shall be provided to all customers equally; or (b) shall be provided on a customer class basis (1) supported by documentation of economic or financial distinctions showing that each rate is just and reasonable, and (2) shall not unduly discriminate. The basis for such discounts or reductions shall be set out in writing.
- 4. The initial FSF shall take effect for the remainder of the current calendar year in which this regulation becomes effective. The initial FSF is computed as follows (see EXHIBIT, Formula No. 1) and shall not exceed \$0.03500 per kilowatt-hour (kWh):
  - Actual year-to-date and any projected remaining year fuel costs for the current calendar year,
  - Divided by actual year-to-date and any projected remaining year electric sales, in kWh, for the current calendar year,
  - Minus the base rate allocation for fuel costs.
- 5. The FSF for subsequent years is computed as follows (see EXHIBIT, Formula No. 2) and shall not exceed the previous year's FSF by more than \$0.02000 per kilowatt-hour (kWh) for those consumers using less than 2,001 kWh per month:
  - · Projected fuel costs for the target year,
  - Plus an adjustment for the preceding year's under-/over-recovery of fuel costs.

- Divided by estimated electric sales, in kWh, for the target year,
- Minus the base rate allocation for fuel costs.
- 6. The MFSA is computed as follows (see EXHIBIT, Formula No. 3):
  - Projected fuel cost for the target month,
  - Plus an adjustment for any prior months' under-/over-recoveries,
  - Divided by estimated electric sales, in kWh, for the target month,
  - Minus the base rate allocation for fuel costs,
  - Limited by the annual FSF ceiling,
- 7. Base rate allocation for fuel costs. The rates per kWh for electrical service effective as of the date of this regulation include a base rate allocation for fuel cost of \$0.05493.
- 8. The Comptroller shall calculate the initial and subsequent years' annual FSF and each MFSA and prescribe the accounts, the forms, and the details of the calculations required to implement the computations required in this regulation.
- 9. The fuel costs, which are subject to cost recovery, include only production fuel for the generation of electricity.
- 10. Any difference between the actual fuel costs and FSF revenues shall be accumulated in a deferred account(s) and shall be subject to an annual reconciliation. Any over- or under-recovery of fuel costs will be included in the next annual FSF.
- 11. No interest shall be paid on the balance in the deferred account(s).
- 12. Each customer's monthly bill shall show separately the base electric rate charge and the fuel charge adjustment.
- 13. Public notice and hearings or workshops. The Comptroller shall provide public notice of the monthly and annual calculations, present the methodology, take comments, and arrange for workshops that may be attended by the customers and other members of the public.

# **EXHIBIT**

# FORMULAE FOR THE COMPUTATION OF FUEL SURCHARGE FEE (FSF) AND MONTHLY FUEL SURCHARGE ADJUSTMENT (MFSA)

# Formula No. 1:

The initial Fuel Surcharge Fee (FSF) will be computed as follows:

Initial FSF 
$$^{1/}$$
 =  $\frac{A}{B}$  - C

A = CUC's actual year-to-date and any projected remaining year fuel costs for the current calendar year.

B = CUC's actual year-to-date and any projected remaining year kWh hour sales for the current calendar year.

C = Base rate allocation for fuel (\$0.05493 per kWh) calculated by DTT, CPAs. See note 2/, below.

# Formula No. 2:

The FSF for subsequent calendar years, will be computed as follows:

$$FSF^{3'} = D +/- E - C$$
 (subsequent years)

D = CUC's projected fuel costs for calendar (target) year.

E = CUC's over/(under) recovery of fuel costs for the preceding FSF period.

F = CUC's projected kwh sales for calendar(target) year.

C = Base rate allocation for fuel (\$0.05493 per kWh) calculated by DTT, CPAs. See note 2/, below.

# Formula No. 3:

The Monthly Fuel Surcharge Adjustment (MFSA) will be computed as follows:

MFSA 
$$^{4\prime}$$
 =  $\frac{G}{I}$  +/-  $\frac{H}{I}$  -  $\frac{C}{I}$ 

G = CUC's projected fuel costs for the next succeeding (target) month.

H = CUC's over/(under) recovery of fuel costs for any preceding month(s).

I = CUC's projected kWh sales for the next succeeding (target) month.

C = Base rate allocation for fuel (\$0.05493 per kWh) calculated by DTT, CPAs. See note 2/, below.

# **NOTES:**

- 1/ Initial FSF cannot exceed \$0.03500 per kWh pursuant to 4 CMC § 8143 (b).
- 2/ The base rate allocation for fuel (\$0.05493 per kWh) is based on fuel consumption and kWh sales for the first quarter (Oct Dec 1992) of fiscal year 1993. The base rate allocation for fuel was estimated to approximate the fuel charge embedded in the current electric rates because the rates did not reflect the ratio between non-fuel and fuel charges.
- 3/ Any subsequent annual FSF cannot exceed the previous year's FSF by more than \$0.02000 per kWh for those consumers using less than 2,001 kwh per month.
- 4/ The MFSA for any month during the current annual FSF period cannot increase by more than the \$0.02000 per kWh limit for those customers using less than 2,001 kWh per month.

# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

2ND FLOOR HON. JUAN. A. SABLAN MEMORIAL BLDG., CAPITOL HILL

CALLER BOX 10007, SAIPAN, MP 96950

TELEPHONE: (670) 664-2341 TELECOPIER: (670) 664-2349

# OFFICE OF THE ATTORNEY GENERAL CIVIL DIVISION

# ATTORNEY GENERAL LEGAL OPINION NO. 05-03

To: Meliza Guarjardo, Administrator, Scholarship Advisory Board

From: James Livingstone, Assistant Attorney General

Date: February 16, 2005

Re: Citizenship Status of So-Called "Stateless" Individuals

This memorandum responds to your request for legal opinion regarding the status of the so-called "stateless" persons.

# Question

Should individuals born in the Commonwealth of the Northern Mariana Islands between January 9, 1978 and November 4, 1986 to two nonresident worker parents be considered United States citizens?

# **Short Answer**

Individuals born in the Commonwealth of the Northern Mariana Islands between January 9, 1978 and November 4, 1986 to nonresident worker parents should be considered United States citizens.

# **Analysis**

As you know, the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant"), 48 U.S.C. § 1801 note, reprinted in CMC at B-101, et seq., defines the relationship of the Northern Mariana Islands and its people to the United States. Traditionally, Section 301(c) of the Covenant has been used to attempt to show that individuals born in the Commonwealth of the Northern Mariana Islands between January 9, 1978 and November 4, 1986 to nonresident worker parents are not United States citizens. This section provides:

[A]ll persons domiciled in the Northern Mariana Islands on the day preceding the effective date of this Section, who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been domiciled continuously in the Northern Mariana Islands beginning prior to January 1, 1974.

Under Trust Territory law, individuals born to two foreign worker parents were not considered to citizens of the Trust Territory. See 53 TTC 1(1). As a result, such individuals needed to be domiciled from January 1, 1974 to November 3, 1986 in the Northern Mariana Islands to qualify for citizenship under Section 301(c). Individuals born after January 1, 1974 could not satisfy this standard because they were not alive during this entire period. Thus, the Commonwealth took the position that the so-called "stateless" individuals were not United States citizens.

The Ninth Circuit, however, has ruled to the contrary. First, it found that Section 501(a) of the Covenant became effective on January 9, 1978. As a result of this section, it held, Section 1 of the Fourteen Amendment of the United States Constitution became applicable to the Commonwealth as if it "were one of the several states." The Fourteenth Amendment, section 1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Because of the combination of Section 501 and the Fourteenth Amendment, the Ninth Circuit held that all individuals born in the Commonwealth after January 9, 1978 became United States citizens. Sabangan v. Powell, 375 F.3d 818, 819 (9th Cir. 2004). Thus, the Court found, that "[the plaintiffs] were therefore born in a jurisdiction [(the Commonwealth)] at a time in which by force of the Constitution itself they became citizens of the United States." Id. The United States has decided not to appeal this decision and it has become final.

Thus, all individuals born in the Commonwealth after January 9, 1978 became United States citizens on the same terms as if they were born in one of the several states.

# Conclusion

Because of the application of Section 501 of the Covenant and the Fourteenth Amendment, individuals born between January 9, 1978 and November 4, 1986 to two nonresident worker parents should be considered United States citizens. *See Sabangan v. Powell*, 375 F.3d 818, 819 (9th Cir. 2004). All prior opinions of the Office of the Attorney General inconsistent with the opinion should be considered withdrawn. Such opinions should no longer be relied upon or cited for any purpose.

Opinion by:

James Livingstone Assistant Attorney Pamela Brown

Attorney General

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/s/ Stacey D. Conner Staff Attorney, Administrative Code January 11, 2006